

# GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT (T&Cs)

## 1. Scope

1.1 Unless otherwise expressly agreed, the following "General Terms and Conditions of Delivery and Payment ("T&Cs") apply to all current and future business relationships (in particular for contracts, deliveries and other services including consultancy services provided in this context that are not the subject of an independent consultancy contract) between GLA-WEL GmbH (referred to below as "Seller") and its customers (referred to below as "Buyer"). They do not apply if the Buyer is a consumer as defined in s. 13 German Civil Code (BGB).

1.2 These General Terms and Conditions of Sale and Delivery apply exclusively. General terms and conditions of the Buyer will in no case become contract terms. This shall apply even if the Seller is aware of them or does not explicitly reject them once again, unless their validity is consented to expressly in writing. These T&Cs apply in place of any general terms and conditions of the Buyer (e.g. conditions of purchase) even if they stipulate that acceptance of the order is an unconditional acceptance of the general terms and conditions of the Buyer.

1.3 In the framework of a current business relationship between merchants the T&Cs will also become a component of the contract if the Seller did not refer expressly to their inclusion.

## 2. Offers and conclusion of the contract

2.1 Offers contained in the Seller's catalogues and sales documentation and - not expressly described as binding - on the Internet are always without engagement, that is, they are to be understood as a mere request to submit an offer, unless they are identified expressly as binding or contain a specific time limit for acceptance. Drawings, illustrations, dimensions, weights and other performance data are only binding if they are expressly agreed in writing.

2.2 The contract becomes effective through the acknowledgement of order from the Seller. This is decisive for the complete content of the contract. The acknowledgement of order from the Seller is usually provided by electronic means. In addition, the acknowledgement of order can also be provided in text form or in writing by the Seller. Apart from this, orders are regarded as accepted if they are executed without delay after receipt of the order. The invoice is then regarded as the acknowledgement of order.

2.3 An order of goods by the Buyer is regarded as a binding contract offer. Unless otherwise specified in the order, the Seller is entitled to accept this contract offer within 4 weeks of the date of its receipt.

## 3. Transfer of risk, packaging and shipping

3.1 Unless otherwise specified in the acknowledgement of order, delivery ex stores is agreed. This applies as well to partial deliveries and partial performance that the Seller provides insofar as it is entitled to provide partial performance and partial deliveries. The risk of accidental loss and accidental deterioration of the goods is transferred to the Buyer at the latest on handover. If an inspection is agreed, this is decisive for the transfer of risk.

3.2 Unless otherwise agreed, the Buyer will be invoiced separately for the costs of transport - where the Seller has not assumed them on the basis of the acknowledgement of order -, packaging and shipping, as well as for payment transactions, customs duties, etc.

## 4. Delivery and delay

4.1 The delivery period follows from the Seller's written acknowledgement of order. Compliance with the delivery period requires that the Buyer fulfils its contractual duties and obligations as agreed. If this is not the case, the delivery period will be extended to a reasonable extent, unless the Seller is responsible for the delay. Binding delivery dates or periods must be confirmed in writing by the Seller to be effective. Compliance with the delivery period is subject to the reservation of correct and punctual self-delivery, provided that the Seller did not cause the incorrect or late self-delivery intentionally or through gross negligence. The Seller shall inform the Buyer without delay of the non-availability of the goods. Consideration that has already been provided will be reimbursed, unless the Buyer declares its agreement with delivery after expiry of the delivery period. This paragraph applies analogously to parts to be provided by the Buyer, insofar as these are specified in the acknowledgement of order.

4.2 Partial deliveries are permitted to a reasonable extent.

4.3 Delivery periods are postponed or extended to a reasonable extent on the occurrence of force majeure and all unforeseen hindrances occurring after conclusion of the contract for which the Seller is not responsible (especially including interruptions of operations, strikes, lockouts or transport disruptions). This applies as well if these circumstances occur at the Seller's suppliers and their subcontractors. The Seller is not liable for the resulting loss for any legal reason whatever. The Seller shall inform the Buyer without delay of the start and end of such hindrances. If the hindrance lasts for longer than 3 months, after setting a reasonable extension of time the Buyer has the right to withdraw from the contract with regard to the part that has not yet been executed. Claims for damages are excluded in this case.

4.4 Apart from this, the Buyer only has rights and claims based on delay if the Seller is responsible for the delay. Statutory provisions apply if the Buyer suffers a loss through a delay to the delivery for which the Seller is responsible. If this means that the Seller has to pay damages, these shall amount for each full week of the delay to 0.5% altogether but not exceeding 5% of the value of that part of the total shipment that cannot be used in time or not in accordance with the contract as a result of the delay. Claims for further damages are excluded. The Seller shall be liable with regard to punctual delivery only for its own fault and that of its vicarious agents. The Seller is not responsible for the fault of its upstream suppliers. However, the Seller is obliged to assign to the Buyer on demand any claims against its upstream suppliers to which it may be entitled.

4.5 In the event of a delivery delay the Buyer is obliged on demand by the Seller to state within a reasonable period to time whether it will continue to insist on delivery, or withdraw from the contract because of the delay and/or demand damages.

4.6 If the Buyer is in default of acceptance or if it culpably breaches other duties to cooperate, the Seller has the right to demand compensation for the resulting damage, including any extra expenditure. In the case of storage by the Seller the storage costs will be 0.25% of the invoice amount of the things to be stored per full week. The right is reserved to claim and provide evidence of additional or lower storage costs. Further claims for damages are reserved; the Buyer is at liberty to prove that we suffered no or lesser damage.

## 5. Prices and payment

5.1 Unless the acknowledgement of order provides otherwise, prices apply in euros

ex works excluding transport and any customs duties. Named prices are understood net of any due VAT at the relevant rate. Reference is made to the rules in section 3.2 with regard to other ancillary costs. The Seller reserves the right to adjust prices accordingly if cost increases occur after conclusion of the contract (in particular as a result of collective wage agreements or changes to material prices).

5.2 Payments by way of bills of exchange are only permissible following special agreement; the Seller is not obliged to this. Bills of exchange and cheques are always accepted on account of performance only and not in lieu of payment. In the event that a cheque of bill of exchange is protested, the Seller may demand immediate cash payment simultaneously against return of the cheque or bill of exchange.

5.3 Unless the acknowledgement of order states otherwise, the stated invoice amount is due and payable within 10 days of invoicing and delivery or acceptance of the goods. The Buyer is in default of payment on expiry of the above-mentioned payment period. The consequences of any payment default by the Buyer are governed by statutory provisions. This does not affect claims for further damage caused by delay. Any cash discounts that were agreed will not be granted insofar as the Buyer is in default of payment for earlier deliveries.

5.4 If the Buyer is in default as a result of a warning notice (s. 286(1) BGB) or if it dishonours a bill of exchange when it is due, the Seller has the right to take the goods back, where necessary to enter the Buyer's premises and remove the goods. In addition, the Seller may forbid the removal of the delivered goods.

5.5 Refusal to pay or retention of payment is excluded if the Buyer knew of the defect or other reason for complaint at the conclusion of the contract. This applies as well if this remained unknown to it as a result of gross negligence, unless the Seller fraudulently concealed the defect or other reason for complaint or warranted the quality of the thing. Apart from this, payment may be retained because of defects or other reasons for complaint to a reasonable extent only.

5.6 Setting off is only possible with claims accepted by the Seller or that are not disputed or are legally established. The Buyer may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

5.7 If the Seller becomes aware after conclusion of the contract of facts, in particular delay in payment with regard to earlier deliveries, that on the basis of reasonable commercial judgement lead to the conclusion that the claim to the purchase price is endangered as a result of a lack of solvency on the part of the Buyer, the Seller has the right, having set a reasonable time limit, to demand at the Buyer's option simultaneous payment or appropriate security and to withdraw from the contract in the event of a refusal, whereby invoices for partial deliveries that have already taken place shall become due with immediate effect.

## 6. Drawings and design modifications, industrial property rights

6.1 The Seller reserves title and copyright to drawings, sketches and other operational documents. These documents may not be duplicated, utilised or made accessible to third parties without the written consent of the Seller. Documents must be returned on demand. The Seller assures that documents that it transmits are not encumbered with third party industrial property rights in the Federal Republic of Germany and insofar indemnifies the Buyer against possible third party claims. However, precondition for this is that the Buyer informs the Seller without delay of claims based on industrial property rights that third parties file against it and acts in agreement with the Seller in dealing with these claims and pursuing its rights. If one of these preconditions is not satisfied, the Seller is released from its statutory duties or duties it assumed under these provisions. The Seller reserves the right to carry out design modifications at any time. However, it is not obliged to carry out such modifications to products that have already been delivered.

6.2 The Seller's liability ceases if the Buyer modifies the goods, or mixes the goods with other substances and this infringes third party industrial property rights.

6.3 If an infringement of industrial property rights occurs for which the Seller is liable in accordance with the conditions and if the Buyer is therefore forbidden in a legally binding judgment from using the goods wholly or partially, the Seller will at its own expense and at its own discretion

- obtain the right for the Buyer to use the goods or
- design the goods free of property rights or
- replace the goods with others that do not infringe any industrial property rights, or
- take the goods back against reimbursement of the consideration paid by the Buyer.

6.4 The Buyer is not entitled to further or other claims based on infringements of third party industrial property rights. In particular, the Seller will not reimburse any consequential damage such as loss of production or use and lost profits. These limitations of liability do not apply if the Seller is mandatorily liable in cases of intention or gross negligence or breach of fundamental contractual obligations or the lack of warranted properties for contractually typical foreseeable damage.

## 7. Installation, startup and assembly

7.1 Installation, startup and assembly of machinery and appliances is carried out only when commissioned by the Buyer. If no deviating written agreements are concluded in an individual case, the above-mentioned and the following provisions apply to all types of installation, assembly and startup by the Seller.

7.2 The Buyer must bear the costs for the following and make available in good time before the start of work by the Seller

- necessary support staff such as skilled workers and assistants with the tools required by these persons in the required quantities;
- the equipment and consumables required for assembly and startup, in addition scaffolding, lifting gear, ladders, welding machines and all other necessary devices;
- operating power in the required form (in particular electricity, gas, oil, petrol) for the installation, startup and/or assembly including the required terminals through to the place of use, heating and general lighting;
- sufficiently dimensioned suitable, dry and lockable rooms at the assembly position for the storage of machine parts, apparatus, materials, tools etc. and suitable work and heated break rooms for the assembly personnel including sanitary installations appropriate to the circumstances;
- protective clothing and protective devices that because of special circumstances are necessary for the assembly position and are not customary for the Buyer.

7.3 If the installation, assembly or startup is delayed through circumstances on the site without fault on the part of the Seller, the Buyer shall bear all costs for the waiting time and necessary additional costs of travel for the Seller's assembly personnel.

7.4 The Buyer is obliged to accept the assembly as soon as it has been notified of termination and completion. The system is checked during the acceptance inspection. If the acceptance is delayed through no fault on the part of the Buyer, it is regarded as having taken place since termination or completion of the assembly. The

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performance risk is transferred to the Buyer when the acceptance of the assembly work has been carried out.

**7.5** The Seller is liable only for the proper installation, startup or assembly of the goods to be delivered; liability for the Buyer's support staff in connection with the installation, startup or assembly is not assumed.

## **8. Notice of defects, warranty and liability**

**8.1** The Buyer shall inspect received goods without delay for quantity and quality. Notices of defects must be submitted in writing showing the type and extent of the deviation from the agreed or standard quality or suitability for use. The customer's defect rights require that it duly complies with its obligations to inspect and submit complaints in accordance with s. 377 German Commercial Code (HGB).

**8.2** If the Buyer detects defects in the goods it may not dispose of them, that is, they may not be divided, resold or further processed until agreement on the settlement of the complaint is reached.

**8.3** In the case of legitimate complaints the Buyer may demand remedy in accordance with statutory provisions. The Seller has the right to stipulate the type of remedy (replacement, rectification), taking account of the type of defect and the Buyer's legitimate interests. If the remedy conclusively fails, the Buyer has the option to demand reduction of the payment or rescission of the contract (withdrawal) pursuant to statutory provisions. In the case of damage caused by simple negligence, the Seller is only liable on a breach of a fundamental contractual obligation. Material contractual obligations are those whose fulfilment characterises the contract and which the Buyer may rely on.

**8.4** The Buyer shall inform the Seller with the minimum of delay of a claim under warranty occurring with a consumer.

**8.5** Claims for defects become statute barred in 12 months from the transfer of risk. This does not apply insofar as the law prescribes longer periods in accordance with s. 438(1) No 2 (buildings and things used for buildings), ss. 445b, 478 (recourse rights) and s. 634a(1) No 2 (construction defects) BGB. Claims for damages based on intention, gross negligence, culpable injury to life and limb and health and claims based on product liability or warranties are also not affected. Measures taken as cure do not lead to an extension of the time limit specified in sentence 1 and do not imply any acknowledgement triggering commencement of a new limitation period.

**8.6** The above limitation periods apply as well to claims by the Buyer for damages based on a defect in the goods, unless application of the standard statutory limitation period (ss. 195, 199 BGB) would lead in an individual case to a shorter limitation period.

**8.7** Section 9 (General limitation of liability) applies as well in case of defects to claims for damages or reimbursement of futile expenses. Apart from that they are excluded.

## **9. General limitation of liability**

Further liability for damages than that provided for in sections 4, 6 and 8, for whatever legal reason, is excluded. Further claims by the Buyer for damages and reimbursement of expenditure (in the following: claims for damages) for whatever legal reason, in particular based on breaches of duties under a contractual obligation and based on tort, are therefore excluded. This does not apply in the case of assumption of a guarantee or a procurement risk. This does not apply either insofar as liability is mandatory, e.g. under the Product Liability Act (German: Produkthaftungsgesetz), in cases of serious fault, because of injuries to life, limb and health, and breaches of fundamental contractual obligations. However, claims for damages based on a breach of fundamental contractual obligations are limited to contractually typical foreseeable damage, insofar as there is no serious fault, or liability is based on injuries to life, limb and health. A change of the burden of proof to the disadvantage of the Buyer is therefore not connected to this.

## **10. Retention of title**

**10.1** The Seller retains title to the goods until full payment of the purchase price. In the case of goods that the Buyer obtains from it in the framework of a current business relationship the Seller retains title until all its claims against the Buyer arising from the business relationship are settled, including future claims, from contracts concluded at the same time or later as well. This also applies if individual or all claims by the Seller are included in a current account and the balance is struck and accepted. If in the context of the payment of the purchase price by the Buyer the Seller becomes liable on the basis of bills of exchange, retention of title does not lapse before the Buyer honours the bill of exchange as the drawee. In the event of default of payment by the Buyer the Seller has the right to take back retained goods after setting an appropriate period of grace and the Buyer is obliged to surrender them. The transport costs resulting for the return shall be borne by the Buyer. If the Seller takes back retained goods, this represents withdrawal from the contract. It is also withdrawal from the contract if it pledges retained goods. The Seller may realise retained goods that is has taken back. The proceeds from realisation will be set off against those amounts that the Buyer owes the Seller, after the Seller has deducted a reasonable amount for the costs of realisation.

**10.2** If the Buyer processes retained goods into a new movable thing, the processing is done for the Seller, without the latter being placed under an obligation because of this; the new thing becomes the property of the Seller. In the case of processing together with goods that do not belong to the Seller, the Seller acquires co-ownership of the new thing in accordance with the ratio of the value of the retained goods to the other goods at the time of processing. If retained goods are combined, intermixed or mingled pursuant to ss. 947, 948 BGB with goods that do not belong to the Seller, the Seller shall become co-owner in accordance with the statutory provisions. If the Buyer acquires sole ownership through combining, intermixing or mingling, it hereby assigns co-ownership to the Seller in the ratio of the value of the retained goods to the other goods at the time of combining, intermixing or mingling. In these cases the Buyer shall store free of charge the thing that the Seller owns or co-owns, which is also deemed to be retained goods as defined in the above provision.

**10.3** If retained goods are sold by themselves or together with goods that do not belong to the Seller, the Buyer hereby assigns claims arising from the resale in the amount of the value of the retained goods with all ancillary rights and priority over other claims; the Seller accepts the assignment. The value of the retained goods is the amount of the Seller's invoice, which remains out of account if it conflicts with third party rights. If resold retained goods are in the co-ownership of the Seller, assignment of claims shall cover the amount that corresponds to the Seller's pro rate share of co-ownership.

**10.4** If the Buyer installs retained goods as an essential component in a property, ship, ship structure or aircraft owned by a third party, the Buyer hereby assigns assignable claims for payment against the third party or the party concerned in the amount of the

value of the retained goods with all ancillary rights, including a right to the grant of a debt-securing mortgage, and priority over other claims; the Seller accepts the assignment. Section 9.3, sentences 2 and 3 apply analogously.

**10.5** If the Buyer installs retained goods as an essential component in a property, ship, ship structure or aircraft owned by the Buyer, the Buyer hereby assigns claims arising from a sale of the property, rights in the property, the ship, ship structure or aircraft in the amount of the value of the retained goods with all ancillary rights and priority over other claims; the Seller accepts the assignment. Section 9.3, sentences 2 and 3 apply analogously.

**10.6** The Buyer is entitled and authorised to resell, use or install retained goods only in the scope of ordinary business activities and only providing that claims as defined in sections 10.3 to 10.5 actually pass to the Seller. The Buyer is not entitled to dispose of retained goods in any other way, in particular pledging or transferring by way of security. The Buyer may not sell or use the goods if it is in default of payment.

**10.7** The Seller authorises the Buyer subject to the right to revoke, to collect claims assigned in accordance with sections 10.3 to 10.5. This shall not affect the right of the Seller to collect these claims itself. The Seller will not make use of its own authority to collect as long as the Buyer complies with its payment obligations, including towards third parties. Otherwise the Buyer shall on demand by the Seller name the debtors of the assigned claims and notify these of the assignment; the Seller is authorised to notify the debtors itself of the assignment.

**10.8** The Buyer shall inform the Seller without delay of execution proceedings by third parties with regard to the retained goods or assigned claims and shall submit the documents required for an objection, and shall indicate the Seller's title so that it can enforce its property rights. The Buyer shall be liable if the third party does not reimburse the Seller for court or extrajudicial costs arising in this context.

**10.9** The right to resell, use or install retained goods or the authority to collect assigned claims shall lapse with cessation of payment and/or a petition to open insolvency proceedings; the authority to collect also lapses in the event that a cheque of bill of exchange is protested. This does not apply to the rights of the insolvency administrator.

**10.10** If the value of the security provided exceeds the claims (where applicable, reduced by payments in advance and part payments) by more than 10%, the Seller shall be obliged to reassign or release at its option. Upon redemption of all of the Seller's claims from the business relationship, ownership of the retained goods and assigned claims shall be transferred to the Buyer.

**10.11** If the above-mentioned security rights in rem cannot be effectively agreed in the case of deliveries outside the Federal Republic of Germany that the Seller carries out at the instigation of the Buyer, with regard to all outstanding claims under the business connection between Buyer and Seller a security right in rem is deemed to be agreed that most closely approaches the above-mentioned security rights and is permissible and possible in the respective jurisdiction.

## **11. Venue and applicable law**

**11.1** If the Buyer is a merchant, a legal entity under public law or a special fund under public law, the place of performance and venue for deliveries and payments (including actions with regard to cheques and bills of exchange) and for all disputes arising between the parties, is Melle. However, the Seller is entitled to bring an action against the Buyer at the location of the latter's registered office. If assembly was agreed, the place of performance for this is the location of the assembly.

**11.2** The relationships between the parties to the contract are subject exclusively to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods.

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