

General conditions of sales - TIVAL Sensors GmbH

§ 1 Scope of validity, form

- (1) These general terms and conditions of sales (T&Cs) apply for all of our business transactions with our customers ("buyer"). The T&Cs only apply if the buyer is a company (§ 14 BGB), a legal entity subject to public law or a public body. Per § 14 BGB, a company is any natural or legal person or any legal partnership with legal capacity acting in the execution of their autonomous professional or commercial activity in the conclusion of a legal transaction.
- (2) The T&Cs apply particularly to contracts regarding the sale and/or delivery of movable goods (hereafter referred to as "goods"), regardless of whether we manufacture the goods in-house or purchase them from sub-suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the T&Cs in the version valid at the time at which the buyer places an order, or in all instances in the version in text form provided to the customer as a framework agreement, shall also apply to all similar future contracts without any requirement for us to refer to them again on an individual basis.
- (3) Our T&Cs apply exclusively. Deviating, contrary or supplementary general business terms of the buyer shall only then and insofar become a part of the contract to the extent that we have explicitly approved their validity. This requirement for agreement shall apply in all instances, for example also if we carry out the delivery to the buyer without reservation in knowledge of their T&Cs.
- (4) Individual agreements reached with the buyer (including side agreements, supplements and changes) in individual cases shall have priority over these T&Cs in all cases. A written contract or our written confirmation shall be decisive for the contents of such agreements, subject to evidence to the contrary.
- (5) Material declarations and notifications which the buyer makes with regard to the contract (e.g. setting deadlines, reporting of defects, withdrawal or reduction declaration) shall be made in written form or text form (e.g. letter, email, fax) to be legally valid. Legal formalities and further verifications, in particular doubts about the legitimization of the declaring party, remain unaffected.
- (6) References to the validity of statutory regulations shall only have clarifying significance. Even without such clarification, the legal provisions shall therefore apply unless directly amended or expressly excluded in these T&Cs.

§ 2 Contractual conclusion

- (1) Our offers are subject to change and non-binding, unless expressly stated otherwise in the offers. This also applies if we have supplied the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), miscellaneous other product descriptions or documents - incl. in electronic form - for which we have reserved proprietary rights and copyright. All of this documentation shall only describe and explain the goods mentioned within them. As a result, they are not a constituent part of the contract. A binding offer provided by us shall remain binding for us for a period of 2 weeks.
- (2) The ordering of the goods by the buyer shall be considered a binding contractual offer. Unless otherwise stipulated in the order, we are entitled to accept this contractual offer within 4 weeks of it being received by us.
- (3) Our acceptance can be declared either in writing (e.g. through an order confirmation) or by shipping the goods to the buyer.

§ 3 Delivery period and delayed delivery

- (1) The delivery period will be agreed individually or stipulated by us with the acceptance of the order. Insofar as this is not the case, the delivery period is 12 weeks from the conclusion of the contract.
- (2) Insofar as we are not able to meet with the binding delivery periods due to reasons for which we are not responsible (unavailability of service) we will inform the buyer of this immediately and will also inform the buyer of the anticipated new delivery period at the same time. If the service is also unavailable within the new delivery period we are entitled to partially or completely withdraw from the contract. We will immediately reimburse the buyer for any counter-performance already implemented. An instance of unavailability of service in this context is the failure of our sub-suppliers to deliver to us in good time if we have concluded a congruent covering transaction, whereby neither us nor our sub-supplier was at fault or whereby we do not have a procurement obligation in the individual case.
- (3) The occurrence of our delay in delivery is determined in accordance with the statutory regulations. In this case however a reminder by the buyer is necessary.
- (4) The right of the buyer per § 9 of these T&Cs and our legal right in particular with the exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance) remains unaffected.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) The delivery is implemented ex stores, which is also the place of fulfilment for the delivery and any subsequent delivery. The goods can also be shipped to another place of fulfilment (sale incorporating the carriage of goods) at the request and expense of the buyer. Unless otherwise agreed, we are entitled to determine the method of shipping (in particular the shipping company, shipping route, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods transfers to the buyer with the transfer of the goods at the latest. With a sale incorporating the carriage of goods however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay, transfers with the execution of the shipping with the dispatch of the goods to the carrier, shipping agent or other person or institute defined for the execution of the shipping. Insofar as an acceptance is agreed, this is authoritative for the transfer of risk. The statutory provisions of the law on contracts for services shall apply

accordingly in other respects for an agreed acceptance. The transfer or acceptance occurs immediately if the buyer is in default with the acceptance.

- (3) If the buyer is in default with the acceptance, omits to carry out an act of co-operation or causes the delivery to be delayed for other reasons then we shall be entitled to demand compensation for the damages arising from this including extra expenses incurred (e.g. storage costs). We charge a remuneration package price for this in the amount of 5% of the sales price. The compensation must be set lower or higher if the seller proves higher loss or the buyer proves that the loss was lower.

The proof of higher damages and our legal claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected. The flat rate is however to be offset against further monetary claims. The buyer is entitled to verify that damages have not been incurred or were incurred at lower amount than the value of the flat-rate sum.

§ 5 Prices and payment terms

- (1) Insofar as not otherwise agreed on an individual basis, our respective current prices at the time of the conclusion of the contract shall apply, ex stores, plus statutory turnover tax.
- (2) With a sale incorporating the carriage of goods (§ 4 sect. 1), the buyer shall bear the transport costs ex stores and the costs of any transport insurance desired by the buyer. In the absence of an agreement on the transport costs, the buyer shall bear the actual transport costs incurred. Any customs duties, fees, taxes and other official charges shall be borne by the buyer.
- (3) The purchase price is due and payable within 30 days from invoicing and delivery or the acceptance of the goods. However, we are entitled at any time, even within the course of a running business relationship, to carry out a delivery in part or in whole only by means of prepayment. A corresponding caveat will be declared by us at the latest with the order confirmation.
- (4) With the expiry of the above-mentioned term of payment the buyer shall be considered to be in arrears. Interest is to be paid on the purchase price at the respective applicable statutory interest rate for arrears during the period of the arrears. We reserve the right to claim for further damages due to arrears. Our claim for the commercial maturity interest (§ 353 HGB [German Commercial Code]) against merchants remains unaffected.
- (5) The buyer is only entitled to rights to offset or retention to the extent that their entitlement has been determined final and binding, is undisputed or is accepted by us. With deficiencies in the service, the counter-right of the buyer in particular per § 8 sect. 6 of these T&Cs remains unaffected.
- (6) If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through insufficient ability of the buyer to pay (e.g. by an application for opening of insolvency proceedings) then according to the statutory regulations we are entitled to refuse service and – if applicable after setting a deadline – to cancel the contract (§ 321 BGB). With contracts concerning the production of custom-made goods (individual productions) we can declare the cancellation immediately. The statutory regulations concerning the dispensability of setting a deadline remain unaffected.
- (7) Deduction of discounts requires an express written agreement. It may also be apparent due to the respective information in our invoice.

§ 6 Retention of title

- (1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and a current business relationship (secured claims).
- (2) The goods subject to reservation of title may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. The buyer must inform us immediately in writing if there is an opening of insolvency proceedings or insofar as there are any instances of access by third parties (e.g. seizures) to the goods which belong to us.
- (3) In the event of conduct of the buyer which is in breach of the contract, in particular with non-payment of the due purchase price we are entitled to cancel the contract in accordance with the statutory regulations and/or to request that the goods are handed over in accordance with the reservation of title. The request for handing over does not at the same time include the declaration of the cancellation. We are moreover entitled to claim the return of the goods and reserve the right of withdrawal. If the buyer does not pay the due purchase price we may only assert this right if we have set the buyer a reasonable deadline for payment in advance without success, or if setting such period is not necessary according to the statutory provisions regarding contract cancellation.
- (4) The buyer is authorised, until rescinded per (c), to resell and/or to process the goods which are subject to reservation of title in proper business transactions. In this case the following provisions shall apply in addition.
 - (a) The reservation of title covers the full value of products which are produced by processing, mixing or combination of our goods, whereby we are deemed the manufacturer. If the ownership right of third parties continues to exist with a processing, mixing or combination, the seller shall acquire joint ownership in relation to the invoice value of the processed, mixed or combined goods. Moreover, the same shall apply to the produced product as to the goods delivered under reservation of title.
 - (b) The buyer hereby now already assigns the claims against third parties, which are established from the resale of the goods or products in total or in the amount of our possible co-ownership share, to us as collateral in accordance with the aforementioned paragraph. We hereby accept the assignment. The obligations of the buyer stated in section 2 shall also apply in view of the assigned claims.
 - (c) The buyer shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer meets their payment obligations towards us, there is no deficiency to their ability to pay and we do not

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we assert the reservation of ownership through the exercising of this right per section 3. However, if this is the case we can request that the buyer informs us of the assigned claims and their debtors, provides all information necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this event we shall also be entitled to revoke the authority of the buyer to further sale and processing of the goods subject to the retention of title.

(d) If the realisable value of the collateral items exceeds our claims by more than 10% we shall upon request of the buyer release collateral items of our choice.

§ 7 Technical advice

(1) Any technical advice provided by us with regard to the area of application etc. for our products is formulated to the best of our knowledge and based on our own experience. We cannot provide any warranty and/or accept any liability for technical advice. All the information and advice about the suitability and area of application for our products does not relieve the customer of their need to carry out their own checks and tests.

(2) Information on the characteristics of our products and/or technical advice relating to applications only forms the basis of the acceptance of a guarantee in the legal sense if the acceptance of a guarantee is expressly declared in writing.

§ 8 Claims for defects of the buyer

(1) The statutory regulations shall apply to the rights of the buyer in the event of defects of quality and title (including incorrect delivery and shortfall in delivery as well as improper assembly or faulty assembly instructions) insofar as not otherwise stipulated below. In all cases the special legal provisions with the final delivery of the goods to a consumer (supplier recourse per §§ 478, 479 BGB) remain unaffected.

(2) The basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions that are part of the individual contract or that are made public by us (particularly in catalogues or on our internet homepage) are considered agreements with regard to the characteristics of the goods.

(3) In the absence of any agreement regarding the quality of the goods, the existence of defects therein shall be determined in accordance with statutory provisions (§ 434 sect. 1 page 2 and 3 of the BGB). We shall not be held liable, however, for any public statements by the manufacturer or other third parties (e.g. advertising messages).

(4) A prerequisite for the buyer's claims for defects is that they have satisfied their statutory obligations for inspection and reporting of complaints (§§ 377, 381 HGB). If a defect is identified during delivery, inspection or at any subsequent point in time then this is to be reported to us immediately. If the buyer fails to carry out the proper inspection and/or report defects, our liability for the defect which was not reported, or not reported in good time or not reported properly in accordance with the legal provisions, is excluded.

(5) If the delivered object is faulty we can initially choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse the subsequent performance under the statutory pre-requisites remains unaffected.

(6) We are entitled to make the owed subsequent performance dependent on the fact that the buyer pays the due purchase price. The buyer is however entitled to retain a part of the purchase price which is reasonable in proportion to the defect.

(7) The buyer must give us the time and opportunity necessary for the due subsequent performance, in particular to hand over the goods for which a complaint was made for purposes of inspection. In the event of substitute delivery, the buyer must return the faulty object to us in accordance with statutory regulations. The subsequent performance does not include the disassembling of the defective goods or the subsequent installation if we were not responsible for carrying out the original installation.

(8) We shall bear the essential costs incurred with the inspection and supplementary performance, in particular transport, travel, work and material costs, if a defect is found to be present. Otherwise we are able to demand that the buyer reimburse any costs incurred by us (in particular test and transport costs) arising from the unjustified demand for rectification of defects, unless the lack of defect could not be detected by the buyer.

(9) We will not bear the costs for removal or installation of goods that have already been delivered and installed. Application of the regulation from § 439 section III of the BGB is expressly excluded.

(10) In urgent cases, e.g. where there is a risk to industrial safety or for the prevention of disproportionately large damages, the buyer is entitled to rectify the defect themselves and demand that we reimburse the costs objectively required for this. We are to be informed about these autonomous activities as soon as possible, in advance if possible. There is no right to carry out autonomous rectification, if we were entitled to refuse subsequent performance in accordance with statutory provisions.

(11) If the subsequent performance has failed or a reasonable deadline which is to be set by the buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the buyer can cancel the purchase contract or reduce the purchase price. However, no right to cancellation exists with a minor defect.

(12) Claims of the buyer for damages or reimbursement of fruitless expenses, also in the event of defects, shall only exist in accordance with § 8 and are incidentally excluded.

§ 9 Miscellaneous liability

(1) Insofar as not otherwise derived from these T&Cs including the following provisions we shall be liable in accordance with the statutory regulations in the event of a breach of contractual and non-contractual duties.

(2) We shall be liable for damages – no matter for what legal grounds – within the scope of fault-based liability in the event of wilful intent and gross negligence. In the event of ordinary negligence we shall only be liable, subject to a reduced scope of liability in accordance with legal provisions (e.g. for the extent of the care we usually employ in our own affairs) only

a) for damages from the injury to life, body or health,

b) for damages from the significant breach of an essential contractual duty (obligation, the satisfaction of which is required for the proper execution of the contract and upon which the contractual partner relies and may reasonably expect to rely upon). In this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

(3) The liability restrictions which can be derived from section 2 shall also apply in the event of breaches of duty by or caused by persons who are responsible for the fault in accordance with legal provisions. This shall not apply where we have maliciously concealed a defect or where we have issued a warranty for the quality of the goods and for buyer's claims arising in conjunction with the German product liability act.

(4) The buyer can only cancel or terminate the contract owing to the breach of a duty, which does not consist of a defect, if we are responsible for the breach of duty. A free right of termination of the buyer (in particular per §§ 651, 649 BGB) is excluded. Moreover, the statutory pre-requisites and legal consequences shall apply.

§ 10 Period of limitation

(1) Notwithstanding § 438 sec. 1 no. 3 BGB the general statute of limitations for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed, the statute of limitations shall begin with the acceptance.

(2) However, if the goods are a building structure or an object that is conventionally used in a building structure and that has caused its defectiveness (building materials) then the period of limitation is 5 years from delivery (§ 438 section 1 no. 2 of the BGB) according to the statutory regulations. Further special legal regulations pertaining to the period of limitation are unaffected (in particular § 438 section 1 no. 1, section 3, §§ 444, 479 BGB).

(3) The statute of limitations of the law governing purchases including existing extensions, shall apply to all contractual defect claims within the legal scope. Insofar as a claim arises against us due to a defect (including non-contractual defects), the regular statutory statute of limitations (§§ 195, 199 BGB) shall apply to this if the application of the statute of limitations of the law governing purchases does not result in a longer period in this individual case.

§ 11 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these T&Cs and the contractual relationship between us and the buyer with the exclusion of international uniform law, in particular the UN Convention on the International Sale of Goods.

(2) If the buyer is a merchant in the sense of the commercial code, a legal entity subject to public law or a public body, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business in Wuppertal. The same applies if the buyer is an entrepreneur in the sense of § 14 BGB. We are however also entitled in all cases to file an action at the place of fulfilment of the delivery commitment in accordance with these T&Cs or an overriding individual agreement or at the general place of jurisdiction of the buyer. Overriding legal regulations, in particular on exclusive jurisdiction, remain unaffected.

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