

General Terms and Conditions of Business

§ 1 - Clause 1 - General Provisions

1. The following Terms and Conditions of Business apply to all present and future offers made by us to and contracts concluded by us with entrepreneurs, public-sector legal entities or special bodies or funds under public law ("Customers"). The Customer's General Terms and Conditions of Business are not recognized.
2. No contract shall come about until we have confirmed the order in writing, or by delivery. Solely our confirmation of the order shall be authoritative for the terms of the contract, in particular the scope of the goods/services. Any amendments and additions require our express confirmation.
3. We reserve the right to make technical or production-related changes to the pictures, drawings, weights and dimensions stated in our brochures and on our website, and our offers provided that the goods/services to be delivered are not thereby significantly altered and the change is reasonable for the Customer.

§ 2 - Prices and Payment Terms

1. Our prices are set out in the price list applicable at the time the contract is concluded.
2. Our prices are stated ex works, including packaging but excluding dispatch and insurance. Statutory value added tax applies in addition. With contracts for more than €1,300.00 (net) we shall assume the transport costs.
3. Our invoices are payable without deduction within 30 days of the issue of the invoice. If payment is made within 10 days of issue of the invoice, we grant a 3 % cash discount provided that at the time of payment all invoices due earlier have been settled. Relevant for a timely payment is the date of receipt of payment by us.
4. If the Customer fails to meet the payment terms or if we have to consider our claims as being at risk because of the Customer's economic circumstances, we can rescind the contract. We are furthermore entitled to make processing of all of the Customer's orders dependent on a payment in advance or the issuing of security. If the Customer is in default of payment, we can immediately call in the total debt due to us.
5. The Customer may only offset counterclaims that are undisputed, or counterclaims that have become final and absolute, or that are reciprocal to our claims against our claims. Any right of retention under earlier or other transactions in connection with the business relationship is excluded. This does not apply to the right of retention based on undisputed claims or claims that have become final and absolute.
6. Any bonuses, discounts and other reductions that we have granted on the prices applicable under Clause 2(1) as well as del credere terms and conditions are granted and paid by us only if all of the Customer's due payment obligations towards us have been fulfilled at the time the bonuses, discounts or other price reductions as well as the del credere terms and conditions are granted and/ or paid. Otherwise any and all claims thereto shall lapse.

§ 3 - Delivery and Acceptance

1. Any delivery dates shall be as agreed in the individual case. In the event of any amendments or additions to the scope of performance after conclusion of the contract any delivery dates and delivery deadlines shall be rendered invalid; they shall automatically be reasonably extended unless a special agreement has been reached.
2. A delivery deadline shall be deemed to have been met if the goods/services to be delivered have been handed over for transportation or they are ready for dispatch and notice thereof has been given.
3. If we cannot meet the agreed delivery date for reasons (stoppages, strike, lock-out, power supply problems, delays in the supply of essential raw and starting materials etc.) for which we are not answerable, we shall inform the Customer thereof without undue delay. The Customer shall not be entitled to rescind. If in any such case it is not foreseeable that we will be able to render our goods/ services within a reasonable period but in any event no later than within 4 months, both we and the Customer can rescind the contract. The same shall apply *mutatis mutandis* if the background

reasons still exist after the expiry of 4 months following our notification. If the background reasons were already apparent to us at the time the contract was concluded we shall not be entitled to rescind.

4. In the case of orders to be called-off, the call-off quantity must be divided into call-off batches with fixed call-off dates when the order is placed. The Customer shall be obliged to call-off the goods within a reasonable period but no later than 9 months after entering into the contract.

§ 4 - The Passing of Risk

1. The risk of accidental loss and of accidental deterioration of the goods/services shall pass to the Customer as soon as the goods are handed over for transportation. If the Customer is in default of accepting the goods/services, the risk shall pass upon notification that the goods/services are ready for dispatch. This shall apply irrespective of whether dispatch is made from the place of performance and who is to bear the transport costs. Upon request by the Customer and at Customer's cost, we shall insure the consignment against theft, breakage, damage in transit, fire and water damage as well as other insurable risks.
2. Part deliveries are permitted if the Customer is able to effectively use the goods so delivered for their contractually stipulated purpose, delivery of the remainder of the goods ordered has been ensured, and the Customer does not thereby incur considerable additional work or expense.

§ 5 - Reservation of Title

1. We shall retain title to goods delivered by us until all of our claims arising out of the business relationship with the Customer have been satisfied in full.
2. The Customer shall store any goods delivered by us subject to a reservation of title separately and clearly marked as our property. The Customer shall insure the goods subject to a reservation of title at its own cost against fire, water damage, breaking and entering and theft. The Customer assigns all claims against the insurance company arising out of the insurance contract to us in advance. We accept said assignment.
3. The Customer shall promptly notify us if any goods delivered to the Customer subject to a reservation of title by us are attached or otherwise encroached upon by third parties. The Customer shall bear any cost required for a removal of the encroachment or a recovery of such goods delivered by us.
4. The Customer shall be entitled to sell the reserved goods in the ordinary course of business so long as the Customer is not in default. Pledges or transfers of title as security are not permitted. The Customer hereby already assigns the accounts receivable that arise out of the re-sale or for some other legal reason (insurance, tort) concerning the reserved goods to us in full as security. We irrevocably authorize the Customer to collect the accounts receivable assigned to us in its own name but for our account.
5. Upon request by us the Customer shall disclose the assignment and hand over to us the information and documents necessary for collecting the accounts receivable.
6. If the reserved goods are bonded with other objects, the reservation of title shall continue in respect of the newly created article. We shall thereby acquire a share of the joint title, which share shall be in the proportion that the value of the reserved goods (invoice value) has to the value of the other processed articles. If one of the bonded articles is to be considered to be the main article, the Customer shall transfer the joint title in the proportion that the value of the goods supplied by us (invoice value) has to the value of the other processed articles. As regards our share of the joint title, the Customer shall keep the new article free of charge. If the reserved goods are resold as an integral part of the new article, the assignment in advance agreed in Clause 5(4) shall apply only in the amount of the invoice value of the reserved goods.

7. If the law of the country, in which any delivered goods are located, does not permit or recognize a reservation of title or does so only in a limited form, we may reserve other rights in the delivered goods. The Customer shall be under a duty to cooperate with us in relation to all measures (e.g. registration) necessary to effect the reservation of title or to create such other rights, as may be appropriate in lieu of a reservation of title, and to protect such rights.
8. If the realizable value of the security to which we are entitled under the above provisions exceeds our claims by more than 10 %, we shall be obliged to release the security in the value that exceeds said amount.

§ 6 - Proprietary Rights and Copyrights

1. The drawings, samples, offers etc. submitted by us remain our property. The Customer is prohibited from passing on the originals or copies of such documents to third parties. To the extent that drawings, samples, offers etc. are copyrightable, we expressly reserve the copyrights therein for ourselves.
2. When goods are produced according to the Customer's specifications, the Customer must ensure that no intellectual property rights or other rights of third parties are infringed. The Customer shall indemnify us and hold us harmless against any third-party rights arising out of such infringements to the extent the Customer is answerable therefore.
3. Where the Customer is in breach of contract, its intellectual property rights shall not prevent us from utilizing the goods.

§ 7 - Warranty Claims

1. If goods/services rendered by us prove to be defective, the Customer's warranty claims shall be as provided by the statutory provisions subject to the proviso that we are initially only obliged to – at our discretion – repair or replace the defective goods. We shall bear the cost of such supplementary performance (“*Nacherfüllung*”), in particular the transport costs, labor costs and cost of materials, The Customer shall bear any increased costs as a result of goods being located elsewhere than the intended place of use.
2. We are entitled to make supplementary performance dependent on the Customer paying the purchase price. The Customer shall, however, be entitled to withhold such part of the purchase price as is reasonable in proportion to the defect.
3. If subsequent performance fails, the Customer can reduce the remuneration or rescind the contract. However, there shall be no right of rescission if the defect is of only minor nature. In addition, the Customer may demand damages in accordance with Clause 8. Any other warranty claims are excluded.
4. If, in the course of repair work, we exchange materials of the Customer which we have delivered, we shall acquire title to the exchanged parts.
5. If the defect is due to a faulty third-party product, we shall be entitled to assign our warranty claims against our supplier to the Customer. In that case a claim can be asserted against us under the above provisions only if the Customer has asserted the assigned claims against the supplier in court.
6. Save in the case of bad faith (“*Arglist*”) and subject to the provisions of Clause 8 (4), the warranty period for defects in quality shall be 12 months following delivery or, if necessary, acceptance of the goods. If the goods supplied by us have been used for a building or structure in accordance with their usual manner of use and have caused said building or structure to be defective, the statutory warranty period shall apply.

§ 8 - Liability

1. We shall be liable for any culpable breach of our material contractual obligations in accordance with the statutory provisions. Material contractual obligations are obligations which characterize the typical purpose of the contract, the performance of which makes the proper implementation of the contract possible in the first place, and compliance with which the other contract party may rely on. However, unless our conduct has been either grossly negligent or intentional, we shall be liable only for the typically occurring, foreseeable damage.
2. In all other cases we shall be liable only if damage has been caused intentionally or grossly negligently by one of our statutory representatives or by a vicarious agent. We shall be liable for damage arising out of any injury to life, body or health in accordance with the statutory provisions. Otherwise claims against us for damages arising out of breaches of duty are excluded.
3. Liability under the Consumer Protection Act No. 46 of 2012 (the “CPA”) and the Competition Act No. 12 of 2010 shall remain unaffected. Any claims for damages pursuant this Clause 8 shall be time-barred in accordance with the statutory provisions.
4. Any claims for damages on the basis of a violation of our obligation of subsequent performance pursuant CAP 21Part II. Section 13,14,15 of Civil Procedure Act 3 Of 1924 (Laws of Kenya)) shall only exist where during the twelve months warranty period pursuant Clause 7 (6) hereof a) the Customer has claimed subsequent performance and b) we have violated our obligation of subsequent performance.
5. We reserve the right to refuse return of goods ones sold. All accepted returns shall be subject to a 10% handling fee

§ 9 - Final Provisions

1. The place of performance for all obligations of both contract parties shall be Nairobi, Kenya.
2. The contractual relationship shall be governed by Kenyan law. The UN Convention on Contracts for the International Sale of Goods is exempted from this, i.e. does not apply.
3. The place of jurisdiction for all legal disputes in connection with this contract shall be determined by our registered office (seat). The Customer can – at our option – also be sued at the place where he has his registered office (seat).
4. The invalidity of individual provisions of this contract shall not affect the validity of the remaining provisions and the continued existence of the contract. Provided it is not a general condition, the void provision shall be replaced by a regulation, the economic substance of which comes closest to that of the void provision. The same shall apply *mutatis mutandis* in the event of a lacuna.



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