

## General Terms of Sale and Delivery of August Dreckshage GmbH & Co. KG

### I. General provisions, scope

(1) Our General Terms of Sale and Delivery shall always apply exclusively; we do not recognise contradictory terms and conditions of the customer or terms and conditions which deviate from our General Terms of Sale and Delivery unless we have explicitly approved their validity. Our General Terms of Sale and Delivery shall also apply if we carry out the delivery to the customer without reservation in the knowledge of contradictory terms and conditions of the customer or terms and conditions which deviate from our General Terms of Sale and Delivery.

(2) All of our deliveries, services and offers shall be exclusively carried out owing to these General Terms of Sale and Delivery. These General Terms of Sale and Delivery are part of all contracts which we conclude with our customers (hereinafter also referred to as "Customer"). They shall also apply to all future deliveries, services or offers to our customers, even if they are not agreed separately once again.

(3) Our General Terms of Sale and Delivery shall only apply towards entrepreneurs within the meaning of Section 14 BGB [German Civil Code], legal entities under public law and special funds under public law.

### II. Offer and conclusion of contract

(1) All of our offers are without obligation and non-binding if they have not explicitly been marked as binding or contain a certain acceptance deadline. Purchase orders or orders can be sent to us in any form. We can accept these within fourteen days after receipt.

(2) The acceptance of an offer is only binding for us if it is carried out in writing. However, the sending or delivery of the ordered goods within the acceptance deadline shall also be deemed an acceptance.

(3) The contract concluded in writing including these General Terms of Sale and Delivery is solely decisive for the legal relationships between us and the Customer. It depicts all agreements between the contractual parties relating to the object of contract in full.

Our oral assurances before conclusion of a contract are legally non-binding and oral agreements of the contractual parties are replaced by the written contract insofar as it cannot respectively and explicitly be derived from these that they will continue to apply as binding.

(4) Supplementations and amendments to the reached agreements including these General Terms of Sale and Delivery require a written form in order to be valid. With the exception of our managing directors and authorised signatories, our employees are not entitled to reach oral agreements which deviate from such agreements.

The transmission using telecommunication means, in particular by fax or by e-mail, is sufficient in order to comply with the written form if the copy of the signed declaration is transmitted.

(5) Our details relating to the object of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as our presentations thereof (e.g. drawings and diagrams) are only approximately decisive if the usability for the purpose envisaged as per contract does not presume precise correspondence. They are no guaranteed characteristics, but descriptions or markings of the delivery or service.

Customary deviations and deviations which are carried out owing to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permitted if they do not impair the usability for the purpose envisaged as per contract.

(6) We reserve the property and copyrights to all offers and cost estimates submitted by us as well as drawings, diagrams, calculations, brochures, catalogues, models, tools, software and other documents and aids made available to the Customer. The Customer may neither make these objects accessible to third parties as such, nor with regard to the contents, without our explicit consent, nor announce these, nor use or reproduce these itself or through third parties. The Customer has to return these objects to us in full at our request and to destroy possibly made copies if they are no longer required by it in the proper course of business or negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of data which are made available using electronic means for the purpose of customary data backup.

(7) The Customer will be granted a simple, non-exclusive right of use to the also delivered software.

(8) We are entitled to use subcontractors at our own costs without prior coordination with the Customer. The use of a subcontractor shall not release us from our obligations as per contract.

### III. Prices and payment

(1) The prices shall apply to the scope of service and delivery listed in the order confirmations. Additional or special services will be charged separately. The prices are deemed in EURO ex works plus packaging, the statutory value added tax, with export deliveries customs duties as well as fees and other public duties.

(2) Invoice amounts are to be paid within thirty days without deduction if not otherwise agreed in writing. Our receipt of the payment is decisive for the date of the payment. If the Customer did not pay when due then interest is to be paid on the amounts at a rate of 5% p. a. from the due date; the assertion of higher interest and further damages in the event of default shall remain unaffected.

(3) The payment by cheque is excluded if it is not agreed separately in an individual case.

(4) The Customer may only offset against its claims if its claims are undisputed or have been declared final and binding. The Customer shall also only be entitled to rights of retention to the extent that its claim is undisputed or has been declared final and binding.

(5) We are entitled to only carry out or provide still outstanding deliveries or services against advance payment or provision of collateral if after conclusion of the contract we become aware of circumstances which are suitable for substantially reducing the creditworthiness of the Customer, and through which the payment of our outstanding receivables from the respective contractual relationship, including from other individual orders for which the same framework agreement applies, is in jeopardy.

### IV. Delivery and delivery time

(1) Our deliveries are principally carried out from our plant in Bielefeld (Germany) insofar as not otherwise derived as an exception from our written delivery confirmation.

(2) Prospective deadlines and dates given by us for deliveries and services shall always only apply approximately unless a fixed deadline or a fixed date has been explicitly promised or agreed.

All agreements with regard to the delivery times are subject to the reservation of the timely receipt of all documents and details which are to be supplied by the Customer as well as other contractual obligations of the Customer. Insofar as a shipment was agreed delivery deadlines and delivery dates refer to the time when the goods are handed over to the carrier, freight forwarder or other third parties commissioned with the transport.

(3) We can request an extension to delivery or service deadlines or a postponement of delivery and service dates from the Customer by the period of time in which the Customer does not satisfy its contractual obligations towards us. Our statutory rights which ensue from the Customer's default shall remain unaffected hereby.

(4) We shall not be liable for impossibility to make the delivery or for delays in delivery if these have been caused by force majeure or other events which were not foreseeable at the time when the contract was concluded (e.g. interferences to operation of all kinds, difficulties in the procurement of material or energy, transport delays, strikes, lawful lock-outs, shortage of workers, energy or raw materials, difficulties with the procurement of necessary official permits, official measures or the omitted, incorrect or late self-delivery by our suppliers), for which we are not responsible. Insofar as such events render the delivery or service substantially more difficult or impossible for us and an impediment is not only temporary, we are entitled to cancel the contract.

In case of temporary impediments the delivery or service deadlines shall be extended or the delivery or service dates will be postponed by the period of the impediment plus a reasonable start-up period. Insofar as it cannot be deemed reasonable for the Customer to accept the delivery or service as a result of the delay, it may cancel the contract by an immediately written declaration sent to us.

(5) We are only entitled to make partial deliveries if the partial delivery is usable for the Customer within the scope of the contractual intended purpose, the delivery of the residual ordered goods is ensured and no substantial additional work or additional costs is incurred to the Customer hereby, unless we declare that we are willing to assume these costs.

(6) If we are in default with a delivery or service or if a delivery or service becomes impossible for us, no matter for what reasons, our liability is limited to damages according to Subclause IX. of these General Terms of Sale and Delivery.

#### **V. Place of performance, shipment, packaging, passing of risk**

(1) The place of performance for all obligations from the contractual relationship, in particular also a possible subsequent performance, is our registered seat in Bielefeld (Germany) insofar as not explicitly otherwise determined. If we also owe the mounting, assembly and/or installation, the place of performance is that location at which we owe the original mounting, assembly and/or installation according to the contractual agreement.

(2) At the request and costs of the Customer the goods will be sent to another place of destination (shipment sale). Insofar as not otherwise agreed we are entitled to determine the type of shipment (in particular transport company and dispatch route) and packaging ourselves at our dutiful discretion.

(3) The risk shall pass to the Customer no later than with the hand-over of the object of contract – whereby the start of the loading process is decisive – to the carrier, freight forwarder or other third party determined for executing the shipment. This shall also apply if partial deliveries are carried out or if we have taken over other services still (e.g. shipment or installation). If the shipment or the hand-over is delayed as a result of a circumstance which was caused by the Customer, the risk shall pass to the Customer from the day on which the object of delivery is ready for shipment and we have reported this to the Customer.

(4) Storage costs after the passing of risk shall be borne by the Customer. With the storage of the object of delivery by us we are entitled to request flat rate storage costs in the amount of 0.5% of the invoice amount of the objects of delivery that are to be stored for each full week of the delay. Both contractual parties reserve the right to assert and prove higher or lower storage costs.

(5) The shipment will only be insured by us against theft, breakage, transport, fire and water damages or other insurable risks at the Customer's explicit request and at its costs.

#### **VI. Acceptance fiction**

Insofar as an acceptance is necessary the object of contract shall be deemed as accepted (acceptance fiction) if

- the delivery and, if we also owe the installation, the installation have been completed,
- we have notified the Customer hereof by referring to the acceptance fiction and have requested it to accept the goods,
- 14 days have passed since the delivery or installation or the Customer has started using the object of contract (e.g. has put the delivered system into operation) and, in this case, seven days have passed since delivery or installation and
- the Customer failed to carry out the acceptance within this period of time due to a reason other than owing to a defect reported to us which renders the use of the object of contract impossible or substantially impairs this.

#### **VII. Obligations of the Customer in case of mounting, assembly and installation**

Insofar as we also or exclusively take over the mounting, assembly, installation or similar services in addition to the delivery of the ordered goods, the following obligations of the Customer shall additionally be deemed as agreed between the contractual parties, if no deviating agreement has been reached in writing:

(1) If partial deliveries have obviously been damaged or a delivery is not complete the Customer has to inform us hereof no later than 1 workday after delivery of the goods in order for a remedy to be created as far as possible before arrival of the fitters. The goods shall be deemed as delivered if they are made accessible to the Customer or a third party determined hereby for the first time to the extent that they can be checked for their condition. The delivered parts are to be stored dry as well as protected against weather effects and against damages by third parties.

(2) The Customer has to ensure that the assembly is possible as of the agreed date and can be carried out without interruption. The floors must be passable and have sufficient load bearing capacity. The access routes must also be suitable for the transport and be freely accessible. The Customer has to inform us in writing no later than 5 workdays before the agreed date whether the assembly is possible at the agreed dates.

(3) The Customer is obliged to provide heating, lighting, water and electrical power including the necessary connections.

(4) The location of all hidden supply lines (e.g. gas, water and electricity lines) as well as details relevant to statics are to be reported to us without request.

(5) The Customer has to certify the completion of the mounting, assembly and/or installation for us immediately after the report and to declare the acceptance of the services provided as per contract. The acceptance cannot be refused owing to insignificant defects.

#### **VIII. Reservation of title**

(1) The objects of contract and delivery (reserved goods) shall remain our property until all claims have been fulfilled to which we are entitled against the Customer now or in future, including all balance claims from current account. If the Customer behaves in breach of contract – in particular if it is in default with the payment of a remuneration claim –, we are entitled to take the reserved goods back after we have set a reasonable deadline for the service. The transport costs incurred for taking the reserved goods back shall be borne by the Customer. If we take the reserved goods back this shall constitute a cancellation of the contract. It shall also constitute a cancellation of the contract if we attach the reserved goods. We may sell reserved goods taken back by us. The proceeds from the sale shall be offset against those amounts which the Customer owes us after we have deducted a reasonable amount for the costs of the sale.

(2) The Customer must treat the reserved goods with due care and attention. It must sufficiently insure these at the value as new at its costs against fire, water and theft damages.

(3) The Customer may use the reserved goods and resell, further process and mix these in the ordinary course of business as long as it is not in default of payment. It may, however, not pledge or assign the reserved goods as security. The Customer hereby now already assigns to us the remuneration claims of the Customer against its buyers from a resale of the reserved goods as well as those claims of the Customer with regard to the reserved goods which are established against its buyers or third parties due to any other legal grounds (in particular claims from an illicit act and claims for insurance payments), including all balance claims from current account in full as security. We hereby accept this assignment.

(4) The Customer may collect these claims assigned to us at its account and in its own name on our behalf as long as we do not revoke this authorisation. Our right to collect these claims ourselves shall not be affected hereby; however, we shall not assert the claims ourselves and not revoke the direct debit mandate as long as the Customer properly satisfies its payment obligations. If, however, the Customer behaves in breach of the contract – in particular if it is in default with the payment of a remuneration claim –, we can request that the Customer announces these claims assigned to us and the respective debtors, notifies the respective debtors of the assignment and hands over all documents to us as well as provides all information, which we require in order to assert the claims.

(5) A processing or conversion of the reserved goods by the Customer is always carried out for us. If the reserved goods are processed with other objects which do not belong to us, we shall acquire the co-ownership to the new object in the ratio of the value of the reserved goods (final invoice amount including the value added tax) to the other processed objects at the time of the processing. Otherwise the same shall apply to the new object produced by processing as for the reserved goods.

If the reserved goods are inseparably connected or mixed with other objects which do not belong to us, we shall acquire the co-ownership to the new object in the ratio of the value of the reserved goods (final invoice amount including the value added tax) to the other connected or mixed objects at the time of the connection or mixing. If the reserved goods are connected or mixed in the manner that the Customer's object is to be seen as the main object, the Customer and we hereby now already agree that the Buyer shall assign us pro rata co-ownership to this object. We hereby accept this assignment. The Buyer will keep the thus-produced sole ownership or co-ownership to an object in safekeeping on our behalf.

(6) In case of attachments to the reserved goods by third parties or with other interventions of third parties the Customer must refer to our property and must inform us immediately in writing so that we can assert our property rights. Insofar as the third parties cannot reimburse us the court or out-of-court costs incurred in this context the Customer will be liable for such costs.

(7) If requested by the Customer we are obliged to release the collateral to which we are entitled to the extent that its realisable value exceeds the value of our outstanding claims against the Customer by more than 10%. We may, however, choose the collateral items which are to be released.

## IX. Material defects and warranty

(1) The warranty period is one year from delivery or, insofar as an acceptance is necessary, from the acceptance. This deadline will not apply insofar as longer deadlines are stipulated by law according to Sections 438 Par. 1 No. 2 (Buildings and objects for buildings), 479 Par. 1 (Claim for recourse) and 634a Par. 1 No. 2 (Building defects) BGB, in case of wilful intent, malicious non-disclosure of a defect as well as with the non-compliance of a guarantee of condition. Also excluded from this deadline are claims for damages of the Customer from the injury to life, body or health as well as claims for damages of the Customer which are due to a wilful or grossly negligent breach of duty on our part or by one of our vicarious agents.

(2) The delivered objects are to be carefully inspected immediately after delivery to the Customer or to the third party determined by the Customer. Insofar as our contractual service according to the purpose of the contract is not determined for resale, the proper inspection of mechanical and electronic components shall also comprise the testing for functionality (function test). The delivered objects shall be deemed as approved by the Customer with regard to obvious defects or other

defects which would have been recognisable with an immediate, careful inspection if we do not receive a written report of defects immediately after delivery. With regard to other defects the objects of delivery shall be deemed as approved by the Customer if we do not receive the report of defects immediately after the time at which the defect was noticed; if the defect was recognisable for the Customer with normal use at an earlier time already, this earlier time is, however, decisive for the start of the deadline for filing a complaint.

(3) In case of material defects to the delivered objects we are initially obliged and entitled to subsequent improvement or substitute delivery at our choice, which is to be made within a reasonable deadline. In the event of failure, i.e. impossibility, unreasonable condition, refusal or unreasonable delay in the subsequent improvement or substitute delivery, the Customer can cancel the contract or reasonably reduce the purchase price.

(4) The Customer has to give us the time and opportunity that is necessary for the owed subsequent fulfilment, in particular to hand over the goods for which a complaint was filed for inspection purposes. At our request an object of delivery for which a complaint was filed is to be returned to us free of freight costs. The costs of the most reasonable dispatch route will be reimbursed by us if we are obliged to do so by law; this shall not apply if the costs are increased by the fact that the object of delivery is located at another location than the location of the use as intended. In the event of the substitute delivery the Customer has to return the faulty object to us according to the statutory regulations. The subsequent fulfilment neither includes the dismantling of the faulty object, nor the renewed installation if we were not originally obliged to carry out the installation.

(5) Insofar as, in an individual case, only one component which can be separated from the object of delivery without further ado is faulty, we shall satisfy our warranty obligation by the subsequent delivery of a faultless component. A component is deemed separable without further ado that can be separated from the object of delivery by an average talented person, without specialist knowledge and without using special tools, within the shortest period of time. At our request the component for which a complaint was filed is to be returned to us free of freight costs. We will reimburse the costs of the shipment under the pre-requisites of Subclause IX. Par. 4 Sentence 3 of these General Terms of Sale and Delivery.

(6) If a product is newly produced by us according to the Customer's stipulations or an existing product is changed or modified according to the conditions of the Customer, the Customer has to issue all instructions regarding the specifications to us fault-free. This shall in particular include the correct, full and up-to-date details and information relating to product stipulations. Faulty instructions or details of the Customer will lead to the exclusion of the warranty insofar as we pointed out problems during the execution or could not recognise the faulty nature of the instructions or details.

(7) With the production of a new product we shall owe the German quality standard "Generally recognised rules of technology" [*Allgemein anerkannte Regeln der Technik*] unless another quality standard is stipulated based on drawings and samples which are to be provided by the Customer, and explicitly agreed by the parties in writing.

(8) If a defect is due to our fault the Customer can request damages under the pre-requisites determined in Subclause XI. of these General Terms of Sale and Delivery.

(9) In case of defects to components of other manufacturers which we may not remedy due to factual reasons or reasons under licensing law we will at our choice assert our warranty claims against the manufacturers and suppliers for the Customer's account or assign said claims to the Customer. Warranty claims against us shall only exist with such defects under the other pre-requisites and according to these General Terms of Sale and Delivery if the assertion of the aforementioned claims against the manufacturer and supplier in court was unsuccessful or, has no prospects for success for example owing to an insolvency.

The statute-of-limitations of the Customer's warranty claims concerned against us is inhibited for the duration of the lawsuit.

(10) The warranty shall cease to apply if the Customer changes the object of delivery without our consent or has it changed by third parties and if hereby the remedy of the defects is made unreasonably more difficult or becomes impossible.

In any case the Customer has to bear the additional costs for remedying the defect incurred due to the change.

(11) A delivery of used objects agreed with the Customer in an individual case shall be carried out under the exclusion of all warranty for material defects.

(12) In all cases of Subclause IX the statutory special regulations with the end delivery of the goods to a consumer shall remain unaffected (supplier recourse according to Sections 478, 479 BGB).

## **X. Property rights**

(1) If a third party asserts an infringement of industrial property rights or copyrights through the object of delivery against the Customer, the Customer undertakes to inform us hereof immediately in writing.

(2) In the event that the object of delivery infringes an industrial property right or copyright of a third party we are entitled and obliged, at our choice that is to be made within a reasonable deadline, to change or exchange the object of delivery at our costs to such an extent that no rights of third parties are infringed any more, however the object of delivery continues to fulfil the contractually agreed functions, or to procure the right of use for the Customer by concluding a licence agreement. If we do not succeed in doing this within a reasonable period of time, the Customer is entitled to cancel the contract or to reasonably reduce the purchase price. Possible claims for damages of the Customer are subject to the restrictions of Subclause XI. of these General Terms of Sale and Delivery.

(3) In case of infringements of rights through products of other manufacturers delivered by us we will, at our choice, assert our claims against the manufacturers and sub-suppliers for the Customer's account or assign said claims to the Customer.

Claims against us shall only exist in these cases according to this Subclause X. if the assertion of the aforementioned claims against the manufacturers and sub-suppliers in court was unsuccessful or has no prospects for success, for example owing to an insolvency. Possible claims for damages of the Customer are also subject to the restrictions of Subclause XI. of these General Terms of Sale and Delivery here.

## **XI. Liability for damages owing to fault**

(1) We shall limit our liability to damages, no matter for what legal grounds, insofar as it respectively depends on a fault, according to this Subclause XI.

(2) We will not be liable in the event of simple negligence of our bodies, legal representatives, employees or other vicarious agents if it does not concern a breach of essential contractual obligations. Those obligations are deemed essential for the contract whose fulfilment makes the proper execution of the contract possible at all, or the compliance with which the buyer may as a rule rely upon.

This shall in particular include the obligation for the timely delivery and installation of the object of delivery, that it is free of defects of title as well as such material defects which more than only insignificantly impair its functionality or usability as well as advisory, protection and care obligations which should enable the Customer the use of the object of delivery as per contract or aim at the protection of the body and life of personnel of the Customer or the protection of its property against substantial damages.

(3) Insofar as we are basically liable for damages according to Subclause XI. Par. 2 of these of these General Terms of Sale and Delivery this liability is limited to damages which we foresaw as a possible consequence of a breach of contract upon conclusion of the contract or which we should have foreseen when applying the customary care and attention. Indirect damages and follow-up damages which are the consequence of defects to the object of delivery are additionally only capable of compensation insofar as such damages are typically to be expected with the use of the object of delivery as intended.

(4) In the event of liability for simple negligence our obligation to compensate property damages is limited to an amount of EUR 5,000,000.00 per damaging event as well as our obligation to compensate financial losses is limited to an amount of EUR 100,000.00 per damaging event (in line with the current sums insured of our employer's and product liability insurance), even if it concerns a breach of essential contractual obligations. In order to hedge a higher damage risk we are willing to agree upon the conclusion of insurance with an accordingly higher sum insured before or upon conclusion of the contract with the Customer. The conditions for this will be individually negotiated between the parties. Such an agreement requires a written form in order to be valid. If the agreement does not contain any regulation concerning who has to bear the additional costs of the further insurance cover, then it is to be assumed that we are entitled to request reimbursement of the necessary additional costs, proven by us, from the Customer.

(5) Insofar as provide technical information or work in an advisory capacity and this information or advice does not belong to the scope of services agreed as per contract and which is owed by us, this will take place free of charge and under the exclusion of all liability.

(6) The aforementioned liability exclusions and limitations shall apply to the same extent for the benefit of our bodies, legal representatives, employees and other vicarious agents.

(7) The limitations to this Subclause XI. shall not apply to our liability owing to wilful conduct, to guaranteed characteristics, owing to the injury to life, body or health or according to the German Product Liability Act.

## **XII. Applicable law, place of jurisdiction, final provision**

(1) The law of the Federal Republic of Germany shall apply exclusively to these General Terms of Sale and Delivery as well as all legal relationships between us and the client respectively the customer under the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of jurisdiction for all possible disputes from the business relationship between us and the client respectively the customer is our registered seat in Bielefeld (Germany). Mandatory statutory provisions concerning exclusive places of jurisdiction shall remain unaffected by this regulation.

(3) Insofar as the contract or these General Terms of Delivery feature loopholes in the regulations, those legally effective regulations shall be deemed as agreed to fill these loopholes which the contractual partners would have agreed according to the commercial objectives of the contract and the purpose of these General Terms of Sale and Delivery if they had been aware of the loophole in the regulations.