

GTC

1.) General Terms and Conditions of Sale

2.) Terms and Conditions of Purchase

1.) General Terms and Conditions of Sale

of the company August Hildebrandt GmbH,
Siemensplatz 1, 19057 Schwerin,

represented by the
managing directors Sabine von Köppen and Mathias Lohraff

§ 1 General – scope

(1). Our terms of sale apply exclusively; we will not accept any opposing or deviating terms and conditions of the customer unless we have explicitly agreed to their validity in writing.

Our terms of sale shall also apply if we deliver the consignment to the customer without reservation and we are aware of opposing terms and conditions of the customer or such terms which differ from our terms of sale.

(2). All agreements and arrangements made between us and the customers for the purpose of the performance of this contract are set forth in writing in this agreement.

(3). Our terms of sale only apply to entrepreneurs and contractors pursuant to § 310 (1) BGB (German Civil Code).

(4). Our terms of sale shall apply in the case of all future business transactions with the customers.

§ 2 Offer – offer documents

(1). Unless otherwise stated in the acknowledgement of order, our offer is without obligation.

(2). We reserve our proprietary rights and copyright on illustrations, drawings, calculations and any other documents. This also applies to written documents marked “confidential”. The passing on of such documents to third parties by the customer is subject to our prior written consent.

§ 3 Price – terms of payment

(1). Except as otherwise stated in the acknowledgement of order, our prices are “franco domicile”, packaging included. We reserve the right to alter our prices accordingly if reductions in costs or increases in costs arise after conclusion of the contract, particularly due to collective agreements of changes in material prices. Such changes will be verified by us upon request by the customer.

(2). Our prices include statutory sales tax. It is shown separately on the invoice in the statutory amount valid on the date when the invoice is issued.

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(3). The deduction of discounts is subject to special written agreement.

(4). Except as otherwise stated in the acknowledgement of order, the net purchase price (without any deduction) shall fall due for payment within 30 days from the date of invoice. The statutory regulations regarding the consequences of delay in payment shall apply.

(5). The customer shall only be entitled to the contractual exclusion of setoff if his counterclaims are declared final and absolute, if they are undisputed or approved by us. Moreover, the customer is authorised to exercise his right of retention insofar as his counter-claim is based upon the same contractual relationship.

§ 4 Delivery period

(1). The commencement of the delivery period stated by us is subject to the clarification of all technical matters. As a basic principle, delivery periods are to be regarded as a general guideline only; the seller shall make every endeavour to observe this delivery period. Partial shipments are admissible.

(2). Furthermore, the meeting of our delivery commitments is dependent upon the customer fulfilling his obligations in a timely and proper manner. We reserve the right to raise objection regarding non-performance of the contract.

(3). Should the customer delay acceptance of the consignment or culpably commit any other breach of duty to cooperate, we shall be entitled to demand compensation for the damage caused to us in this respect, including any additional expenses. We reserve the right to assert further claims.

(4). Insofar as the conditions stated in paragraph 3 are present, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the time of his default of acceptance or payment.

(5). We shall be liable in accordance with statutory provisions insofar as the underlying contract of sale is a transaction at a fixed date in terms of § 286 paragraph 2, No. 4 BGB or of § 376 HGB (German Commercial Code). We shall also be liable in accordance with the statutory provisions insofar as the customer is entitled to claim cessation of his interest in continuing the performance of the contract as a result of a delay in delivery for which we are responsible.

(6). In addition, we shall be liable in accordance with statutory provisions insofar as the delay in delivery is due to an intentional or grossly negligent breach of contract on our part; a fault on the part of our representatives or vicarious agents is to be attributed to us. Insofar as the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages shall be limited to predictable and typical damage.

(7). We shall also be liable in accordance with statutory provisions insofar as the delay in delivery, for which we are responsible, is due to the culpable breach of a fundamental contractual duty; in this case, however, our liability for damages shall be limited to predictable and typical damage.

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(8). Furthermore, in the event of a delay in delivery, we shall be liable for each completed week of the delay to pay lumpsum compensation for damage resulting from delay in the amount of 0.5 % of the value of the goods to be delivered, but not more than 5 % of the value of the goods to be delivered.

(9). The above is subject to additional statutory claims and rights of the customer.

§ 5 Passing of risk – packing costs

(1). Except as otherwise stated in the acknowledgement of order, our prices are stipulated as “franco domicile”, including packaging.

(2). Special agreements shall apply with regard to the return of packaging materials.

(3). If desired by the customer, we shall arrange for insurance cover for the transport of the consignment; costs arising in this regard shall be borne by the customer.

§ 6 Liability for defects

(1). The provisions set forth below apply to the delivery of newly manufactured objects. Insofar as the customer orders secondhand objects, delivery shall be effected without any guarantee whatsoever.

(2). The rights of the customer with regard to defects are subject to his having duly met his responsibilities to check the consignment and to provide notification of defects as required by § 377 HGB.

(3). The appearance and workmanship of the objects to be delivered shall be measured according to state-of-the-art technology, taking into account the sizes indicated by the customer. The state-of-the-art technology valid at the time when the contract was concluded shall be decisive.

(4). Insofar as there is a defect in the purchased object, we are entitled to opt to remedy the defect or to deliver a new object without defects by way of subsequent performance. In the event of our opting to remedy the defect, we are obliged to assume all of the costs arising in connection with the remedy of the defect, particularly costs of transport, infrastructure, labour and materials insofar as there is no increase in these costs caused by transporting the object of sale to a place other than the place of performance. In the case of remedy of defects, we shall only assume the costs up to the amount of the purchase price.

(5). In the event of subsequent performance failing, the customer may opt to rescind the contract or demand a reduction in price.

(6). We shall be liable in accordance with the statutory provisions insofar as the customer asserts claims for compensation which are due to intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Unless we have been accused of intentional breach of contract, liability regarding compensation shall be limited to predictable and typical damage.

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(7). We shall be liable in accordance with the statutory provisions in the event of our culpably committing a fundamental breach of contract; in such case, however, liability regarding compensation shall be limited to predictable and typical damage.

(8). Liability due to culpable injury to life, limb or health shall remain unaffected; this also applies to liability which is compulsory pursuant to the Product Liability Act.

(9). Liability is excluded unless otherwise stipulated above.

(10). Claims regarding defects become statute barred 12 months from the passing of the risk.

(11). The statutory period of limitation in the event of a claim to damages based on a defective consignment pursuant to §§ 478, 479 BGB shall remain unaffected; the period is 5 years calculated from delivery of the defective object.

§ 7 Joint and several liability

(1). Additional liability for compensation other than provided in § 6 is excluded regardless of the legal nature of the asserted claim. This applies, in particular, to claims for damages arising from a violation of mutual confidence in the preparation of the contract (culpa in contrahendo), owing to any other breaches of duty or due to unlawful compensation claims concerning damage to property in accordance with § 823 BGB.

(2). The limitation pursuant to paragraph 1 shall also apply if the customer demands compensation for futile expenses in place of claims for damages instead of performance.

(3). Insofar as liability for damages is excluded or limited vis-à-vis our company, this shall also apply to the personal liability for damages in respect of our salaried employees, employees, members of staff, representatives and vicarious agents.

§ 8 Securing of reservation of ownership

(1). We reserve the right to reservation of ownership with regard to the object of sale until all payments arising from the business relationship with the customer have been received. Should the customer act in breach of the contract, particularly in the case of a delay in payment, we are entitled to take back the object of sale. This recovery of the object of sale constitutes a rescission of contract on our part. We are authorised to utilise the object of sale taken back; the proceeds from such utilisation shall be credited against the financial obligations of the customer after deduction of reasonable utilisation costs.

(2). The customer is obliged to treat the object of sale with due care; in particular, he is obliged to provide adequate insurance cover for them with regard to damage due to fire, water and theft at their original value. Insofar as maintenance and servicing work is required, the customer shall carry out such work in good time and at his own expense.

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(3). The customer is to notify us in writing without delay in the event of levies of execution or any other intervention by third parties so that we can take legal action pursuant to § 771 ZPO (German Code of Civil Procedure). Should the third party be unable to reimburse us with regard to court fees and out-of-court expenses of a lawsuit pursuant to § 771 ZPO, the customer shall be held liable for losses incurred by us.

(4). The customer is entitled to re-sell the object of sale in an orderly business transaction; the customer shall, however, already assign to us all accounts receivable to the value of the final amount of the invoice (including sales tax) of our account receivable which accrue to him from the re-sale vis-à-vis his customers or third parties – this applies regardless of whether the object of sale has been re-sold without or after processing or machining.

The customer shall still be authorised to collect this account receivable even after this assignment. Our authorisation to collect the account receivable ourselves remains unaffected. We shall, however, undertake not to collect the account receivable as long as the customer meets his financial obligations arising from the proceeds received and he does not get into arrears with payments and, in particular, that no application has been filed for the initiation of insolvency proceedings or that payments have been suspended. Should this be the case, however, we may demand that the customer discloses to us the assigned claims and their debtors, that he furnishes all necessary information and surrenders all appropriate documents and that he notifies the debtors (third parties) of the assignment.

(5). The processing or alteration of the object of sale by the customer is always carried out for us. Should the object of sale be processed together with other objects which do not belong to us, we shall acquire joint ownership of the new object in proportion of the value of the object of sale (final invoice amount, including sales tax) to the other processed objects at the time of processing. For the rest, the same shall apply to the object resulting from processing as to the object of sale delivered under reserve.

(6). We undertake, at the request of the customer, to release the securities to which we are entitled to the extent that the realizable value of our securities exceeds the accounts receivable to be secured by more than 10 % ; we shall be responsible for the choice of securities to be released.

§ 9 Place of jurisdiction and performance

(1). Insofar as the customer is a businessman, our corporate domicile is our place of jurisdiction; we are, however, entitled to file action against the customer at the court at his place of residence.

(2). The law of the Federal Republic of Germany shall apply; application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(3). Except as otherwise stated in the acknowledgement of order, the place of performance shall be our corporate domicile.

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2.) Terms and Conditions of Purchase

of the company August Hildebrandt GmbH,
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represented by the
managing directors Sabine von Köppen and Mathias Lohraff

§ 1 General – scope

- (1). Our terms of purchase apply exclusively; we will not accept any opposing or deviating terms and conditions of purchase of the customer unless we have explicitly agreed to their validity in writing. Our terms of purchase shall also apply if we accept delivery from the supplier without reservation and we are aware of opposing terms and conditions of the supplier or such terms which differ from our terms of purchase.
- (2). All agreements and arrangements made between us and the customers for the purpose of the performance of this contract are to be set forth in writing in this agreement.
- (3). Our terms of purchase only apply to entrepreneurs and contractors pursuant to § 310 (1) BGB (German Civil Code)
- (4). Our terms of purchase shall apply in the case of all future business transactions with the supplier.

§ 2 Offer – offer documents

- (1). The supplier is obliged to accept our order within a period of 2 weekdays.
- (2). We reserve our proprietary rights and copyright on illustrations, drawings, calculations and any other documents; they may not be made accessible to third parties without our prior explicit written consent. They are only to be used for production purposes on the basis of our order; they are to be returned to us, unrequested, after completion of the order. They are to be kept secret from third parties; in this respect the provision under § 9 (4) shall also apply.

§ 3 Prices – terms of payment

- (1). The price quoted in the order is binding. Except as otherwise agreed upon in writing, the price includes delivery “franco domicile”, packaging included.
The return of packaging materials is subject to special agreement.
- (2). Statutory sales tax is included in the price.
- (3). We can only process invoices if the order number is indicated on this invoice, as specified in our order; the supplier shall be responsible for all consequences arising from non-compliance with this obligation unless he proves that he is not responsible for these consequences.

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(4). Except as otherwise agreed upon in writing, we will effect payment of the purchase price within 2 weeks, calculated from the date of delivery and receipt of invoice, with 2 % cash discount or within 30 days from receipt of invoice.

(5). We are entitled to rights of set-off and rights of retention to the extent permitted by law.

§ 4 Delivery period

(1). The delivery period stated in the order is binding.

(2). The supplier is obliged to notify us in writing without delay if circumstances arise or if such circumstances become recognisable to him which result in his being unable to observe the stipulated delivery period.

(3). We are entitled to assert statutory claims in the event of a delay in delivery. In particular, we are entitled to demand compensation in place of performance after the fruitless expiration of a reasonable period. Should we demand compensation, the supplier is entitled to prove to us that he is not responsible for the breach of duty.

§ 5 Passing of risk – documents

(1). Except as otherwise agreed upon in writing, delivery is to be effected “franco domicile”.

(2). The supplier is obliged to indicate our exact order number on all shipping documents and delivery notes; should he fail to do this, we will not be responsible for any delays in processing.

§ 6 Inspection for defects – liability for defects

(1). We are obliged to inspect the goods for any discrepancies in quality or quantity within a reasonable period; the notification of defects shall be deemed in good time if it is received by the supplier within a period of 5 working days, calculated from the receipt of the goods or, in the case of latent defects, upon discovery thereof.

(2). We are entitled to warranty claims to the full extent; in either case we are entitled to opt to demand the remedy of defects or delivery of a new object from the supplier. We explicitly reserve the right to compensation, particularly to the right of compensation in place of performance.

(3). In the event of imminent danger or if the goods are required particularly urgently, we are entitled to remedy the defects ourselves at the expense of the supplier.

(4). The period of limitation is 36 months, calculated from the passing of risk.

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§ 7 Product liability – exemption

Should the supplier be responsible for damage to products, he is obliged to indemnify us against claims for damages by third parties upon initial request insofar as the cause is in his field of authority and organisation and he is himself liable with regard to third parties.

§ 8 Place of jurisdiction and performance

(1). Insofar as the supplier is a businessman, our corporate domicile is our place of jurisdiction; we are, however, entitled to file action against the supplier at the court at his place of residence.

(2). Except as otherwise stated in our order, the place of performance shall be our corporate domicile.