

# AGB of SM-Klebeteknik Vertriebs GmbH

## General Terms and Conditions of Business

### § 1 General, Scope

#### 1.

These General Terms and Conditions of Business apply to all business relations between SM-Klebeteknik Vertriebs GmbH and its customers.

#### 2.

The General Terms and Conditions apply in particular to contracts for the sale and/or delivery of movable goods (also referred to hereinafter as: "goods"), irrespective of whether the goods are manufactured by us or purchased from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the version of the General Terms and Conditions valid at the time of the customer's order or in the version last notified to him in text form shall apply as a framework agreement and shall also apply to similar future contracts without us having to refer to them again in each individual case.

#### 3.

Our General Terms and Conditions shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in all cases, for example even if we carry out the delivery to the customer unconditionally in the knowledge of the customer's general terms and conditions.

#### 4.

Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in all cases take precedence over these General Terms and Conditions. A written contract or our written confirmation shall be authoritative for the content of such agreements.

#### 5.

Legally relevant declarations and notifications from the customer with regard to the contract (e.g. setting of deadlines, notice of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Formal requirements and further evidence, in particular in case of doubt regarding the legitimacy of the declarant, shall remain unaffected.

#### 6.

References to statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these General Terms and Conditions.

## **§ 2 Conclusion of Contract**

### **1.**

Our offers are subject to change and non-binding. This also applies if we have provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, reference to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve property rights and copyrights.

### **2.**

The order of the goods by the customer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 4 weeks of receiving it.

### **3.**

Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.

## **§ 3 Delivery Date and Delivery Delay**

### **1.**

The delivery date shall be agreed individually or stated by us upon acceptance of the order. If this is not the case, the delivery date shall be approximately XXXXX weeks from the closing of the contract.

### **2.**

If we are unable to meet binding delivery dates for reasons for which we are not responsible (non-availability of the service), we shall inform the customer of this without delay and at the same time provide a new expected delivery date. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already rendered by the customer. A case of non-availability of the service in this sense shall be deemed to be, in particular, the failure of our supplier to deliver on time if we have concluded a congruent cover transaction, where neither we nor our supplier are at fault or we are not obliged to procure in the individual case. Our statutory rights of withdrawal and termination, as well as the statutory provisions on the contract's execution in the event of an exclusion of the service obligation (e.g. impossibility or unreasonableness of service and/or subsequent fulfillment) shall remain unaffected. The customer's rights of withdrawal and termination pursuant to § 8 of these General Terms and Conditions shall also remain unaffected.

**3.**

The occurrence of our delivery delay shall be determined in accordance with the statutory provisions. In all cases, however, a reminder by the customer by registered letter is required, setting us a reasonable grace period.

**§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

**1.**

Delivery shall be ex warehouse, which is also the place of fulfillment. At the request and expense of the customer, the goods shall be shipped to another destination (shipment sale). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging).

**2.**

The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest upon handover. In the case of shipment sale to a place other than the place of fulfillment, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated for fulfillment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply to an agreed acceptance. The handover or acceptance shall be deemed equivalent if the customer is in default of acceptance.

**3.**

If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). For this purpose, we shall charge a flat-rate compensation at the amount of 5%. The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The customer shall be entitled to prove that we have incurred no damage at all or only a significantly lower damage than the above lump sum.

**§ 5 Prices and Terms of Payment**

**1.**

Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus the statutory value added tax applicable at the time.

**2.**

In the case of shipment sale to a place other than the place of fulfillment ( § 4 paragraph 1), the customer shall bear the transport costs ex warehouse and the costs of any transport insurance desired by the customer. Any customs duties, fees, taxes and other public charges shall be borne by the customer. We do not take back transport or any other packaging in accordance with the Packaging Ordinance; it becomes the property of the customer, with the exception of pallets

**3.**

The remuneration is due and payable within 30 days of the date of invoice and delivery or acceptance of the goods. However, in cases of contracts with a delivery value of more than EUR 20,000.00, we are entitled to demand an advance payment of 30 % of the remuneration. The advance payment is due and payable within 14 days of invoicing.

**4.**

Once the aforementioned payment deadline has lapsed, the customer shall be in default. During the period of default, interest shall be charged on the remuneration at the statutory default interest rate applicable at the time. We reserve the right to assert further damage caused by default. With respect to traders, our claim to the commercial due date interest rate (§ 353 HGB) remains unaffected.

**5.**

The customer shall only be entitled to offset rights and rights of retention insofar as its claim has been legally established or is undisputed. In the event of defects in the delivery, § 7 paragraph 6 shall remain unaffected.

**6.**

If, after conclusion of the contract, it becomes apparent that our claim to remuneration is jeopardised by the customer's inability to pay (e.g. through the application for the opening of insolvency proceedings), we shall be entitled to refuse fulfillment in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacturing of untenable items (custom-made products), we may declare withdrawal immediately; the statutory regulations on the dispensability of setting a deadline remain unaffected.

## **§ 6 Retention of Ownership**

**1.**

We retain ownership of the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

**2.**

The goods subject to retention of ownership may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The customer must inform us immediately in writing if and to which extent third parties have access to the goods belonging to us.

**3.**

In the event of customer conduct constituting breach of contract, in particular in the event of non-payment of the remuneration due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods on the basis of the retention of ownership and withdrawal. If the customer does not pay the remuneration due, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

**4.**

Until revoked in accordance with (c) below, the customer shall be authorised to resell the goods subject to retention of title in the ordinary course of business and/or to process them. In this case, the following provisions shall additionally apply:

**a)**

The retention of ownership extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

**b)**

The customer hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the customer stated in paragraph 2 shall also apply with regard to the assigned claims.

**c)**

The customer remains, in addition to us, authorised to collect the claim. We undertake not to collect the claim as long as the customer meets his payment obligations towards us, that there is no other deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to paragraph 3. In this case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, provides the relevant documents and informs the debtors (third parties) of the assignment.

Furthermore, in this case we shall be entitled to revoke the customer's authorisation to further sell and processing of the goods subject to retention of title.

**d)**

If the realisable value of the securities exceeds our claims by over 10%, we shall release securities of our choice at the request of the customer.

## **§ 7 Customer Claims for Defect**

**1.**

The statutory provisions shall apply to the rights of the customer in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or deficient assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions in the case of final delivery of the goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB) shall remain unaffected. Claims from supplier recourse are excluded if the defective goods have been further processed by the customer or another company, e.g. by installing them in another product.

**2.**

The basis of our liability for defects is primarily the agreement reached on the quality of the goods. The agreement on the quality of the goods shall be deemed to be the product descriptions designated as such which were provided to the customer prior to order placement or which were included in the contract in the same way as these General Terms and Conditions.

**3.**

Insofar as quality has not been agreed, whether a defect exists or not is to be assessed according to the statutory regulation (§ 434 paragraph 1 clauses 2 and 3 BGB). However, we do not accept any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

**4.**

The customer's claims for defects are subject to the condition that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent during the inspection or later, we must be notified of this in writing without delay. The notification shall be deemed to have been made without delay if it is made within two weeks, whereby timely dispatch of the notification shall suffice in meeting the deadline. Irrespective of this obligation to inspect and give notice of defects, the customer shall notify us in writing of obvious defects (including incorrect and short deliveries) within two weeks of delivery, whereby timely dispatch of the notification shall also suffice to meet the deadline. If the customer fails to carry out the proper inspection and/or give notice of defects, our liability for the defect not reported shall be excluded.

**5.**

If the delivered item is defective, the customer may initially demand, at his discretion, either rectifying of the defect (rectification) or delivery of a defect-free item (replacement delivery) as subsequent fulfillment. If the customer does not declare which of the two rights he chooses, we may set a reasonable deadline for him to do so. If the customer does not make the choice by the deadline, the right of choice shall pass to us upon lapsing of the deadline.

**6.**

We are entitled to make the owed subsequent fulfillment dependent on the customer paying the remuneration due. However, the customer shall be entitled to retain a part of the remuneration which is reasonable in relation to the defect.

**7.**

The customer must give us the time and opportunity necessary for the owed subsequent fulfillment, in particular in handing over the disputed goods for inspection purposes. In the event of a replacement delivery, the customer shall return the defective item to us in accordance with the statutory provisions.

**8.**

We shall bear the expenses required for the purpose of testing and rectifying, in particular, transport, travel, labour and material costs, in accordance with the statutory provisions if there is actually a defect. However, if the customer's request for rectification of defect proves to be unjustified, we shall demand reimbursement of the resulting costs from the customer, unless the lack of defect was not recognisable for the customer.

**9.**

In urgent cases, e.g. if operational safety is jeopardised or to prevent disproportionate damage, the customer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this. We must be informed immediately of such self-execution, where possible in advance. The right of self-execution does not exist if we were to be entitled to refuse a corresponding subsequent fulfillment according to statutory provisions.

**10.**

If the subsequent fulfillment fails or if a reasonable period to be set by the customer for the subsequent fulfillment lapses without success or is dispensable according to the statutory provisions, the customer may withdraw from the contract or reduce the remuneration. In the case of an insignificant defect, however, there shall be no right of withdrawal.

**11.**

Claims by the customer for damages or reimbursement of wasted expenses exist only in accordance with § 8 and are otherwise excluded.

## **§ 8 Other Liability**

### **1.**

Unless otherwise stated in these General Terms and Conditions, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

### **2.**

We shall be liable for damages - irrespective of the legal grounds - in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable

#### **a)**

for damages arising from injury to life, to body or to health,

#### **b)**

for damages arising from the breach of an essential contractual obligation (obligation, the fulfilment of which is a prerequisite for the proper execution of the contract and on the adherence of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

### **3.**

The limitations of liability resulting from paragraph 2 shall also apply in the case of breaches of duty by or in favour of persons whose fault we are responsible for according to statutory provisions. They do not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims under the Product Liability Act.

### **4.**

The customer may only withdraw from or terminate the contract due to a breach of duty that is not a defect if we are responsible for the breach of duty. A free right of termination on the part of the customer (in particular pursuant to §§ 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation**

### **1.**

Contrary to § 438 paragraph 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall begin upon acceptance.

### **2.**

However, if the goods are a building structure or an object that has been used in accordance with its normal use for a building and caused it to be defective (building material), the limitation period is, according to the statutory regulation, 5 years from delivery (§ 438 paragraph 1 no. 2 BGB). Special statutory provisions for claims in rem



for the surrender of goods by third parties also remain unaffected. § 438 paragraph 1 no. 1 BGB), in the event of fraudulent intent on the part of the seller (§ 438 paragraph 3 BGB) and for claims in supplier recourse in the event of final delivery to a consumer (§ 479 BGB).

### **3.**

The above limitation periods shall also apply to contractual and non-contractual claims for damages of the customer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act shall remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to claims for damages by the purchaser pursuant to § 8.

## **§ 10 Choice of Law and Place of Jurisdiction**

### **1.**

These General Terms and Conditions and all legal relationships between us and the customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. However, the prerequisites and effects of the retention of ownership pursuant to § 6 are subject to the law of the respective place of storage of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective thereafter.

### **2.**

If the customer is a trader according to the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office, which is currently located in Heinsberg. However, we are also entitled to bring action at the general place of jurisdiction of the customer.