

# General Terms and Conditions

## C. Cramer, Weberei, Heek-Nienborg, GmbH & Co. KG, Eper Straße 45 – 47, 48619 Heek

### § 1 Place of performance, place of delivery and acceptance

1. The place of performance for all services from the delivery contract is the location of the commercial establishment of the seller.
2. The delivery of the goods will be ex works. The buyer bears all shipping costs. The buyer may choose the freight forwarder. The goods are to be sent without insurance. A delivery notification can be agreed.
3. Packaging costs for special packaging will be borne by the buyer.
4. Part shipments must be timely and require advance notice.
5. If the acceptance of the goods does not occur on time as a result of the fault of the buyer, the seller has the right, after the expiration of a grace period of 12 calendar days to either invoice the goods for immediate payment (statement of account) or to withdraw from the contract and/or to demand compensation.
6. Material provisions of the buyer must be delivered to the production site of the seller at the cost of the buyer.

### § 2 Place of jurisdiction

The court of jurisdiction (also for bill of exchange and check litigation) is the competent court of the main office of the seller. The seller can also file suits against the buyer at his general place of jurisdiction.

### § 3 Contract contents, conclusion of the contract, material provision

1. The delivery of the goods will occur on specific dates (business days or a calendar week). All sales are made for fixed amounts, articles, qualities and fixed prices. Both parties are bound to this. Commission transactions are not performed.
2. Block orders are permissible and must be limited at the conclusion of the contract. The acceptance period shall not exceed 12 months.
3. The contract shall be deemed to be concluded if the order confirmation of the seller is not contested, with delivery by the seller at the latest.
4. The seller is only liable for further processing if the buyer makes material available for further processing; he does not have to ensure that the material provided by the buyer is suitable for achieving the intended purpose of the further processing by the buyer. An examination of the material provided by the purchaser is only owed by the seller if this has been expressly agreed in writing. The buyer is obliged to provide the material to be provided on time and in a workable condition.
5. Only the general terms and conditions of the seller shall apply to the contract; other terms and conditions do not become part of the contract, even if the seller does not expressly contradict them.

### § 4 Interruption of delivery

1. In the event of force majeure, industrial action not attributable to a contracting party and other incidental operational faults which have lasted, or are likely to last, longer than a week, the delivery or acceptance period and time limits for the provision of material by the buyer are extended by the duration of the delay, by a maximum, however, of 5 weeks plus the subsequent delivery period in accordance with § 5. The extension only applies when the other party is given prompt notice of the reason for the delay, as soon as it is foreseeable that the stated delivery and acceptance period cannot be complied with.
2. If the delivery or acceptance in the cases referred to in Point 1 has not occurred within the extended delivery and acceptance period, the other party may withdraw from the contract after the expiration of a grace period of 12 calendar days.
3. Claims for damages in the case of Point 1 are excluded if the contract party has met their obligations in accordance with Point 1.

### § 5 Grace period for delivery

1. After the expiry of the delivery period, the buyer may set the seller a subsequent delivery period of at least 12 calendar days. After expiry of this grace period for delivery, the buyer can withdraw from the contract by means of a written declaration. If the buyer does not deliver material to be provided to the buyer, the seller can set a grace period of 12 calendar days for the buyer and withdraw from the contract/demand compensation after fruitless expiry.
2. If the buyer wishes to claim compensation instead of performance, it must set a grace period for the seller of at least a period of 4 weeks after the expiry of the agreed delivery date by way of derogation from Paragraph 1.
3. For shipping-ready goods and NOS-goods - "Never-out-of-stock", by way of derogation from Paragraph 1, the subsequent delivery period is 5 business days. In the case of non-delivery, the buyer is to be informed immediately. The provisions of Paragraphs 1 and 2 apply in other respects.
4. Prior to the expiration of the subsequent delivery period, claims of the buyer on account of late delivery are excluded, unless, § 7 Para 2 applies.

### § 6 Notice of defect

1. The buyer must examine the goods immediately after delivery by the seller and if a deficiency is discovered, he must indicate it to the seller immediately. The buyer shall notify the seller about hidden defects promptly once they are discovered.
2. After cutting or other commenced processing of the delivered goods, any claim of apparent defects is excluded.
3. Minor, technically-unavoidable deviations in quality, colour, width, weight, equipment or design are not considered defects. This applies also to deviations customary in the trade unless a delivery made according to sample has been agreed upon with the seller in writing.
4. In the case of justified complaints regarding defects, the buyer, at the discretion of the seller, has the right to rectification of defects or replacement delivery of defect-free goods. The buyer must return the defective goods that the expense of the seller. The seller is entitled to a subsequent improvement period of at least twelve working days after receipt of the returned goods. If the supplementary performance has failed, the buyer only has the right to reduce the purchase price or to withdraw from the contract, unless, § 7 Para 2 applies.
5. Limitations of the function or appearance of the product as a result of the material provided by the buyer are due according to the contract and do not establish any warranty or claims for damages of the buyer.
6. If a notice of defect is not raised within this period, the goods shall be deemed to be approved.

### § 7 Compensation

1. Compensation claims of the buyer are excluded, unless otherwise provided for in these terms and conditions.
2. The exclusion in Paragraph 1 does not apply if liability exists according to the Product Liability Law, in the case of intent, gross negligence on the part of the owners, legal representatives and executive staff, in the case of malicious intent, in the case of non-compliance with a guarantee for the culpable infringement of essential contractual obligations, also not in the case of a violation of life, body or health; essential contractual obligations are those whose fulfilment forms the contract and the buyer may rely upon. A claim for damages due to the violation of substantial contract obligations is however limited to foreseeable damage typical for the contract, as far as no other case given in Sentence 1 is at hand.
3. No change of burden of proof to the disadvantage of the Buyer is connected with the preceding provisions.

### § 8 Payment

1. The invoice is issued on the day of delivery or the provision of the goods. A postponement of the due date (value date) is excluded.
2. Invoices are payable within 30 days net. Default enters into force according to § 286 BGB.
3. If a bill of exchange is accepted by the seller instead of cash, cheque or bank transfer, a surcharge is applied of 1% of the total of the bill of exchange for the collection of the bill of exchange 31 days from the date of invoice and dispatch of goods when the bill of exchange is accepted.
4. Amendments to the regulation method require 3 months' prior notice.
5. Payments are always used to settle the oldest due items plus the accrued interest.
6. The final crediting of the account of the seller is relevant for the timeliness of payment.

### § 9 Payment after the due date

1. When payments are made after the due date, interest is charged at 9 percentage points above the current basic interest rate in the meaning of § 247 BGB. § 288 BGB applies in all other respects.
2. The seller is not obliged to perform any further delivery from any current contract before complete payment of invoice amounts with which the buyer is in arrears. The assertion of damages caused by default remains reserved.
3. In the event of a significant deterioration in financial circumstances, such as the threat of insolvency or default of payment, the seller may refuse the service incumbent on him for all supply contracts based on the same legal relationship to him or withdraw from these supply contracts after setting a period of 12 calendar days. § 321 BGB applies in all other respects. § 119 InsO remains unaffected.

### § 10 Method of payment

For the buyer, the offsetting and withholding of due invoiced amounts is only permitted with undisputed or legally established claims.

### § 11 Retention of title

1. Until the complete payment of all claims from the delivery of goods from the entire business relationship, including ancillary claims, compensation claims and the cashing of cheques and bills of exchange, the product remains the property of the seller. The retention of title also remains if individual claims of the seller are added to a current invoice and the balance has been drawn and recognised.
2. If the reserved good is connected, mixed or processed to a new movable object by the buyer this applies for the seller without any obligation arising from this. The buyer does not acquire ownership of the new object according to §§ 947 et seq BGB by connection, mixing or processing. In the event of connection, mixing or processing with objects which do not belong to the seller, the seller acquires co-ownership of the new object in the ratio of the invoice value of the reserved good to the overall value.
4. The buyer is entitled to further sale or processing only under consideration of the following conditions:
  - a) The buyer may only sell or process the reserved good in the ordinary course of business if his financial situation does not subsequently deteriorate considerably.
  - b) The buyer hereby assigns the claim with all ancillary rights from the resale of the goods - including any balancing claims - to the seller. The seller accepts this assignment.
  - c) If the good has been connected, mixed or processed and the seller has demanded co-ownership to it in the amount of the invoice value, the seller is entitled to the purchase price claim in proportion to the value of his rights to the good.
  - d) If the buyer sells the claim in the course of genuine factoring, the buyer assigns their claim to the factor to the seller and derives its sales revenue in proportion to the value of the rights of the seller of the goods to the seller. The buyer is obliged to disclose the assignment to the factor if he is more than 10 days overdue with the payment of an invoice or if his financial situation deteriorates significantly. The seller accepts this assignment.
  - e) The buyer is entitled to collect the assigned claims as long as he meets his payment obligations. The collection authorisation expires in the event of delay of payment by the buyer or significant deterioration of the financial situation of the buyer. In this case, the seller is hereby authorised by the buyer to inform the customers of the assignment and to collect the claim themselves. For the enforcement of the assigned claims, the buyer must provide the necessary information and allow the verification of the information. In particular, he must hand the seller a detailed statement of all claims with name and address of the customer, amount of the individual claims, invoice date etc. on request.
5. If the value of the existing security for the seller exceeds all its claims by more than 10%, the seller is obliged to release his securities at the discretion of the buyer.
6. Pledging or chattel mortgaging of the reserved goods or the assigned claims is forbidden. The seller must be informed of pledging and the identity of the lien creditor.
7. If the seller retrieves the object of delivery in the exercise of their ownership reservation this does not automatically result in a withdrawal from the contract. The seller shall be entitled to satisfaction by free sale of the repossessed reserved goods.
8. The buyer must store the reserved goods for the seller free of charge. He must protect them against the usual dangers to the usual extent e.g. fire, theft and water. The buyer hereby assigns its compensation claims to which he is entitled from damage of the aforementioned kind from insurance companies or others liable to provide compensation to the seller in the amount of the invoice value of the goods. The seller accepts this assignment.
9. All claims and rights from the retention of title to all special forms set out in these conditions remain until the complete release from contingent liabilities (cheque-bill of exchange) into which the seller has entered in the interests of the buyer. In the case of Sentence 1, the buyer is, in principle, entitled to engage in factoring in respect of receivables outstanding. However, he must inform the seller before incurring contingent liabilities.

### § 12 Applicable law

The law of the Federal Republic of Germany shall apply under exclusion of the referral provisions of international private law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 04.11.1980 is hereby excluded.

(Revised version of 01.03.2017)