

# General Terms and Conditions of Trade and Delivery of TSI GmbH & Co. KG

## 1. Area of Application

The following General Terms and Conditions of Trade and Delivery (hereinafter referred to as *General Terms*) apply exclusively to the business relationships between TSI GmbH & Co. KG (hereinafter referred to as *TSI*) and the customer, unless it has been specifically agreed otherwise in writing. TSI shall agree with the customer upon conclusion of the contract about the applicability of these General Terms, including for subsequent orders, even if a specific agreement has not yet been reached on the latter. Business terms applied by the customer, which deviate from these General Terms, shall not be binding for TSI. All contrary purchase and business terms presented by the customer shall be rejected herewith.

## 2. Conclusion of the contract

Offers from TSI are non-binding unless it is specifically stated otherwise. The contract shall come into force upon written confirmation of the order by TSI and at the latest at the time of delivery of the goods. The TSI order confirmation governs the content of the contract. All information agreed upon verbally must be accompanied by written confirmation signed by TSI Management or a legally authorized officer of TSI.

## 3. Prices and Terms of Payment

All prices are understood to be net, plus the respectively valid statutory sales tax (VAT), unless it has been specifically agreed otherwise in writing.

TSI payment terms are net cash without deductions and immediately payable upon delivery. The customer shall be considered to be defaulting in payment if he fails to settle the latter within ten (10) days of the due date and receipt of an invoice and at the latest 30 days after receipt of the delivery notwithstanding an early default in payment on the basis of legal provisions.

Notwithstanding the customer's provisions to the contrary, payments shall be calculated according to the oldest TSI account. Bills of exchange and cheques shall be accepted as payment in accordance with a separate agreement on account of performance for TSI and shall be free of costs and fees. The applicable payment or calculation date shall be the date of receipt of the payment by TSI or the date of the bank credit memo.

The customer may only offset such counterclaims or exercise a right of retention against claims, which have been acknowledged by TSI, or have been confirmed by a court of law.

If it becomes evident after the conclusion of contract that the claim for consideration of TSI is at risk due to the customer's lacking ability to perform, TSI shall be entitled to predicate the delivery and performance on prepayment or the lodging of a security. If the prepayment or security is not settled within a reasonable time period determined by TSI, TSI shall be entitled to rescind the contract.

## 4. Delivery

Compliance with agreed delivery dates is subject to punctual self-supply. Non-delivery, delayed delivery, or damage resulting from force majeure or other unforeseen, extraordinary events not caused by TSI (e.g., violence, strikes, lockouts, etc.) shall not be the responsibility of TSI. In these cases, the delivery period shall be extended by the duration of such events, in addition to an appropriate lead time, but not more than six (6) months. At the end of this period, both parties shall be entitled to terminate the contract. The same applies if one party is seriously disadvantaged as a result of the delay.

Deliveries, including partial deliveries, are made at the expense and risk of the customer. Liability shall be transferred to the customer when the goods are issued for shipment. This is also applicable if a carriage free delivery has been decided upon in exceptional circumstances. If the goods are to be collected from the customer, liability shall be transferred to the customer with the delivery notification. Pallet exchanges and their dimensions must be arranged prior to delivery or pick-up. Otherwise, all pallets delivered will require a fee of Euro 10.00 each.

TSI shall be entitled to make partial deliveries of products in so far as this is reasonable.

In the event of delivery delays caused by TSI, then the customer may specify in writing an appropriate grace period, which must amount to four (4) weeks unless the setting of a deadline is not necessary according to the law or a grace period of four (4) weeks cannot be expected of the customer. After the fruitless expiration of this grace period, the customer is entitled to withdraw from the contract or claim the appropriate damages instead of the service according to fig. 7 of these General Terms. If TSI does not have the right to defer damage claims, then the right to withdraw from the contract and the right to claim damages are excluded.

## 5. Retention of Ownership

Delivered products remain the sole property of TSI for as long as the total price is not fully paid.

In case of the goods becoming parts of or being converted into products of third parties, TSI shall acquire co-ownership of the new product in a percentage corresponding to the relation between the value of the delivered products and the new item (in case of doubt the customary value).

The customer shall be entitled to sell the products being subject to retention of title within the ordinary course of business provided that he is not in arrears, the initiation of insolvency proceedings has not been requested in connection with his assets and he is not bound by an application for insolvency proceedings. Pledges, transfers by way of securities and the cessation of rights to use for third parties shall only be authorized to the customer subject to the prior written agreement of TSI.

The customer assigns in advance to TSI any claims which may arise from the resale of the products to which TSI retains title, together with any incidental rights. If TSI only possesses a jointly owned share, the claims shall be assigned in proportion to the jointly owned share. TSI accepts the transfer. The customer may revoke the assigned claims for TSI in his own name. TSI is entitled to reclaim the reservation of goods without this being associated with withdrawal from the contract, in the event of non-contractual behavior on the part of the customer, in particular in the case of overdue payment.

The customer is obliged, in the event of third party access to the products subject to retention of title, to refer specifically to the ownership of TSI and to inform TSI without delay and to provide all the information and documents required for intervention. The customer is responsible for the expenses, which result for the abolition of access, particularly due to the presentation of third party opposition complaints, insofar as they cannot be attained from the pursuing creditor.

## 6. Rights of the customer regarding defects of the delivered product

Defect rights are excluded if the customer does not examine the delivered product as far as this is possible after a proper business routine and does not immediately report recognizable defects to TSI in writing at the latest however within five (5) working days. Not recognizable defects have to be announced immediately in writing after discovery.

Acceptance receipts issued by the customer to the transportation representative concerning the scope of the delivery received are also for the benefit of but not at the expense of TSI.

TSI reserves the right regarding material defects to produce a warranty by a complete or partial substitute delivery. The right to the withdrawal or reduction of the purchase price is only granted to the customer when a period set by the customer in writing has expired for the substitute delivery, which in principle must amount four (4) weeks, unless a deadline is dispensable according to the law or an extension of four (4) weeks cannot be expected of the customer.

Claims for compensation can only be made according to Paragraph 7 of these General Terms.

The limitation period for claims for defects is one (1) year as of delivery of the product.

Recourse claims by the customer according to § 478 of the German Civil Code (BGB / Bürgerliches Gesetzbuch) remain untouched provided that no equal compensation is granted to the customer.

## 7. Damage claims

TSI shall be liable for breaches of duty based on a firm intention or gross negligence as well as in the event of the violation of an essential contractual obligation if this threatens the fulfillment of the contractual purpose (cardinal obligation) even as a result of simple negligence. Compensation claims are otherwise excluded. This limitation of liability shall not apply, if TSI has given a guarantee or has assumed the procurement risk for damages, which have to be rectified according to the product liability law as well as for damages relating to life, body or health.

If TSI is liable on account of simple or gross negligence, the liability is limited to the damage whose occurrence TSI could typically expect due to the circumstances known upon conclusion of the contract.

If TSI is liable on account of a simple negligence or on account of gross negligence on the part of employees or representatives who are not business managers or senior employees, TSI shall not be liable for indirect losses, secondary damages or lost profits.

The proof of a fault of TSI in the context of liability for damages has to be furnished by the customer.

Insofar as the liability of TSI is excluded or restricted by these regulations this also applies to the personal liability of the employees or free employee of TSI.

## 8. Severability Clause

If individual regulations of these General Terms should prove ineffective, this shall not limit the effectiveness of the other conditions.

## 9. Applicable Law, Place of Performance, Jurisdiction

The law of the Federal Republic of Germany shall apply, excluding Private International Law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The place of jurisdiction is Hamburg, Germany for all obligations from the business affected on the basis of these conditions.