

# Terms and Conditions of Sale and Delivery Witzenmann GmbH

July 2020

## 1. Scope of application

- 1.1 These Terms and Conditions for Sale and Delivery of Witzenmann GmbH apply to all order, delivery and service agreements in which Witzenmann GmbH undertakes to perform services or deliver to a customer.
- 1.2 These Terms and Conditions of Sale and Delivery solely apply with respect to entrepreneurs as defined by Section 14 German Civil Code, but do not apply with respect to consumers.
- 1.3 We shall perform all of our deliveries and services exclusively in accordance with these Terms and Conditions of Sale and Delivery. We do not accept conflicting or deviating terms issued by the customer, except for where we have agreed in writing with the validity of said terms.
- 1.4 Our Terms and Conditions for Sale and Delivery shall also apply to future transactions, even if we should not make reference thereto in the individual case.

## 2. Offer and conclusion of agreement

- 2.1 Our offers shall be subject to change without notice and non-binding, provided that they are not expressly designated as a binding offer.
- 2.2 Decisive for the contract - also in day-to-day business - is our written or textual order confirmation (i.e. also by fax or email). If the customer has objections to the extended content of the order confirmation, he must query this immediately. Failing this, the agreement shall be deemed to have been concluded in accordance with the order confirmation.
- 2.3 The customer expressly acknowledges and agrees that we give no guarantee that our results will achieve any results or goals, and that results, if based on small-scale trials and/or on theoretical studies, will need an individual, very careful assessment to extrapolate them into the production stage or series production. Apart from that, a guarantee is only deemed to have been accepted by us if we designate a property or success as „legally guaranteed“ in writing.
- 2.4 Before concluding the contract, the customer is obligated to inform us in good time in writing of all actual or potential special requirements and dangers to health and safety with regard to a sample as well as other dangers that may occur with the performance of the services and instructions for safe handling of the sample. The customer assumes full responsibility for the appropriate safety labelling with regard to the samples and other equipment that he makes available to us.

## 3. Prices

- 3.1 The effective prices shall be deemed to be the prices indicated in the order confirmation. Unless agreed otherwise, these prices shall apply ex works and shall not include packaging, carriage, shipping, insurance, customs duties, other expenses or statutory value-added tax.
- 3.2 Payment methods other than cash or bank transfer require a separate agreement between us and the customer; this applies in particular to cheques and bills of exchange.
- 3.3 If more than 4 months elapse after conclusion of the agreement and fulfillment of the order, we shall be entitled to adjust the prices within the scope of the altered circumstances and without charging an additional profit if price increases occur, which we are unable to foresee due to increases in wages, ancillary wage costs, social security contributions or material and energy costs or product procurement costs as a result of environmental regulations or introduction or substantial increases in taxes or customs duties. This shall not apply if we are in default of delivery. A price increase is excluded if the cost increase is offset by a cost reduction for other factors mentioned. If the aforementioned cost factors are reduced, the cost reduction must be passed on to the customer as part of a price reduction. If the new price is 20 % or more above the original price due to the price increase, then the customer is entitled to withdraw from contracts that have not yet been completely fulfilled. However, he can only assert this right immediately after notification of the increased price.
- 3.4 Upon default, default interest shall be charged at 9 percentage points above the base rate of the European Central Bank when the payment request is due. We reserve the right to claim any further damages.

## 4. Offsetting and retention

- 4.1 The customer may only offset with an uncontested counter-claim or a counter claim, which has been declared legally valid.
- 4.2 The customer shall only be permitted to assert a right of retention where the said right is based on the same contractual relationship.

## 5. Delivery / Passage of risk / Default of delivery

- 5.1 The risk of accidental destruction and accidental deterioration of the goods shall pass to the customer upon delivery, or in the case of dispatch, upon the transfer of the goods to the party responsible for transport.
- 5.2 If we select the mode of dispatch, the route or the dispatching party, we shall only be liable for gross negligence in the selection concerned.
- 5.3 Binding delivery dates and deadlines must be expressly agreed in writing. Delivery and/or service periods begin upon receipt of our order confirmation by the customer, but not before all details of the execution of the order have been clarified and all other requirements and necessary obligations to be fulfilled by the customer have been met. If the customer has requested modifications after an order has been made, then a new delivery period begins with our confirmation of the change.
- 5.4 The customer may only withdraw on account of a failure to adhere to delivery dates if he has previously issued us a reasonable grace period under threat of declining the delivery and if the delivery has not occurred within the said grace period. This shall not apply where the fixing of a deadline is superfluous in accordance with Section 323 (2) of the German Civil Code. Claims for damages exist only in accordance with the regulations in Section 8.
- 5.5 We shall only be in default of delivery after a reasonable grace period has been set by the customer. If the customer suffers damage as a result of our delay in delivery, he shall be entitled to claim damages due to the delay. For each completed week of delay, this amounts to 0.5 % of the net remuneration for the delayed delivery of goods and/or services as a whole, but not more than 5 % of the net remuneration for the total delivery and/or total services that are not in time or not delivered and/or performed in accordance with the contract due to the delay. Any further compensation for damage caused by delay shall be excluded. This does not apply in the event of willful, grossly negligent or fraudulent behaviour on our part, in the event of claims for injury to life, limb or health, in the case of an agreed fixed delivery date in the legal sense and the assumption of a performance guarantee or in the case of legally binding liability.
- 5.6 We shall be entitled to partial deliveries if this is not unreasonable for the customer. We are entitled to carry out excess or short deliveries of up to 5 %. We are also entitled to deliver the goods with customary deviations in quality, dimensions, weight, colour and equipment. Such goods are considered to be in accordance with the contract.

## 6. Confirmation of arrival

- 6.1 Customers in other EU countries shall be obligated to send us on demand, in accordance with legal regulations and using a form which we have provided, a confirmation of arrival for the purpose of documenting tax exemption. Should the customer use his own text for the confirmation of arrival, we will accept said text if it satisfies all legal requirements.
- 6.2 If, despite the fixing of a deadline, the customer fails to provides us this confirmation of arrival, the customer shall be liable for any disadvantages which we incur as a result.

## 7. Defects

- 7.1 The customer shall be obligated to inspect without delay each delivery upon acceptance or receipt and to immediately give notice of any visible defects in writing. Notice of hidden defects must be given in writing immediately after their discovery. Otherwise, the delivery shall be deemed to have been approved.
- 7.2 If a defect should be present for which we are to be held liable, we shall have the right to subsequent performance in that we may choose to eliminate the defect or to deliver an item free from defects. In the event that the subsequent performance is refused by us, has failed or is unreasonable for the client, the client shall have the right to assert the further claims provided for by law. The provisions in Item 8 of these Terms and Conditions shall apply to claims for damages. Acknowledgment of any breaches of duty in the form of material defects must always be made in writing.
- 7.3 We reserve the right to make modifications to the design and/or the finish which do not negatively affect either the functional efficiency or the value of the delivery object; said modifications shall not constitute a defect.

- 7.4 The materials shall be stated on the basis of our experience with regard to production, except where specified by the customer. Our recommendation shall not absolve the customer of the responsibility to verify the suitability for his intended application. The risk of use shall be borne by the customer.

- 7.5 In the event of improper handling, installation errors, intervention by third parties and defects due to processes over which we have no control, there shall be no liability for defects. Natural wear is not covered by liability for defects.

## 8. Liability

- 8.1 We shall be liable for damages or reimbursement of expenses, regardless of the legal grounds, in the event of wrongful intent and gross negligence. In the event of ordinary negligence we shall only be liable
  - for damage resulting from the injury to life, limb or health;
  - for damage resulting from the violation of material contractual duties (obligations without the performance of which the proper discharge of the agreement would not be possible and on the compliance with which the customer relies and may rely); in this case, however, our liability shall be limited to the foreseeable, typically occurring damage.
- 8.2 These limitations on our liability shall not apply where we have maliciously concealed a defect and where we have issued a warranty for the quality of the goods and accepted liability under the German Product Liability Act (Produkthaftungsgesetz).
- 8.3 Any fault on the part of our legal representatives and vicarious agents shall be attributed to us.

- 8.4 Our liability for each individual case of damage is limited to a maximum liability coverage of EUR 5 million. This does not apply if we are guilty of malice, intent or gross negligence, for claims arising from injury to life, limb or health, as well as in the case of a claim based on an unlawful act or an expressly assumed guarantee or the assumption of a procurement risk in accordance with Section 276 of the German Civil Code or in cases of higher differing liability amounts prescribed by law. Any further liability shall be excluded.

- 8.5 The exclusions and limitations of liability according to the above sections 8.1 to 8.4 shall apply to the same extent in favour of our executive bodies, managerial and non-managerial employees and other vicarious agents as well as our subcontractors
- 8.6 The legal provisions pertaining to the burden of proof shall remain unaffected by the foregoing provisions.

## 9. Limitation period for bringing claims

- 9.1 Except where otherwise stipulated below, the general period of limitation for claims brought by the customer due to defects in quality and title shall be one year from delivery. This period of limitation shall apply to the contractual and non-contractual claims for damage brought by the customer based on a defect of the goods.
- 9.2 The statutory limitation periods, also provided that the claims are based on a defect, shall apply
  - to claims for damage resulting from the injury to life, limb or health;
  - to liability under the German Product Liability Act (Produkthaftungsgesetz);
  - where we have maliciously concealed a defect;
  - where we have issued a warranty;
  - where said claims concern a structure or an item which has been used for a structure in accordance with the item's common manner of use and causes said structure to become defective;
  - to claims for supplier recourse in the case of an end delivery to a consumer (Section 479 BGB).

## 10. Retention of title

- 10.1 We reserve the right to retain the title to all goods and services that we deliver until such time as all claims from prior agreements have been paid in full (goods subject to retention of title). Claims also include cheques and bills of exchange and claims from current accounts. If liability is established on our part from a bill of exchange in connection with the payment, the right to retain the title shall not expire before the claims arising from the bill of exchange can no longer be brought against us.
- 10.2 The customer must adequately insure the goods subject to retention of title, particularly against fire and theft. Claims against the insurance arising from a claim affecting the reserved goods shall hereby be assigned to us in the amount corresponding to the value of the reserved goods. We hereby accept the assignment.
- 10.3 In the event of breach of contract by the customer, especially in the case of default of payment, or if it becomes noticeable that our payment claims are jeopardized due to an inability of the customer to render payment, we shall be entitled to reclaim the goods on the basis of the retention of title. The customer is obliged to surrender the goods and shall bear the transportation costs required for their return.
- 10.4 In the event of attachments or other interventions by third parties, the customer shall notify us without delay. The customer shall bear all expenses which must be incurred in order to reverse the seizure and to recover the delivery object, provided that said expenses are not eligible for collection by the third party.
- 10.5 The customer shall be entitled, subject to a revocation permissible for good cause, to dispose of the delivery object within the scope of the ordinary course of business. In particular, transfer of title as collateral and pledging shall not be permitted. The goods subject to the retention of title may only be passed on to the purchaser by the customer if the customer is not in default on its obligations towards us. The customer may not enter into any agreement with his customers that exclude or impair our rights in any way, or nullify the assignment of the claim in advance. In the event of a resale, the customer shall assign to us with immediate effect all claims arising from the resale, in particular payments claims, as well as all other claims related to the sale, in the amount of our final invoice amount (including value added tax).
- 10.6 The customer shall be authorised by us, until a revocation permissible for good cause, to collect the assigned claims in a fiduciary capacity. The resale of the claims as part of non-recourse factoring transaction shall require our prior consent. We shall, for good cause, also be entitled to notify the third party debtors of the claim assignment in the name of the customer. The customer's collection authorisation shall expire upon the announcement of the assignment to the third party debtor. In the event that the collection authorisation is revoked, we may demand that the customer identify to us the assigned claims and the debtors thereof, provide us with all information necessary for collection, surrender to us the corresponding documents and report the assignment to the debtors. In particular, good cause as defined by these provisions shall be deemed to be present in the event of a default in payment, stoppage of payments, initiation of insolvency proceedings, protest of a bill of exchange or reasonable indications for absolute insolvency of the customer or an imminent inability of the customer to pay.
- 10.7 The working and processing of the delivery object by the customer shall always occur on our behalf. We shall be considered the manufacturer as defined by Section 950 BGB without further obligation. If the delivery object is processed to include other objects not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the invoice amount to the purchase price of the other processed goods. Otherwise, the provisions which apply to the delivery object shall apply to the item resulting from the processing.
- 10.8 In the event that the delivery object is connected to, blended with or combined with personal property of the customer in such a manner that the property of the customer can be deemed as constituting the main item, the customer shall hereby transfer to us with immediate effect co-ownership of the entire item in the ratio of the value of the delivery object to the value of the other connected, blended or combined items. The customer shall keep custody of the property for us free of charge. If the delivery object is connected to, blended with or combined with the personal property of a third party in such a manner that the property of the third party can be deemed as constituting the main item, the customer shall assign to us with immediate effect his right to the payment claim against the third party in the amount equal to the portion of the total invoice amount accounted for by the delivery object. The new item resulting from a connection or blending, or the rights of (co-) ownership in the new item, which rights belong to us or are to be transferred to us, as well as the claims for payment assigned as set forth in the paragraph above, shall serve to secure our claims in the same manner as the delivery object itself.
- 10.9 If the value of the existing securities according to the aforementioned provisions exceed the collateralized claims by more than 10 %, we are obliged to release securities of our choice at the customer's request.

- 10.10 Unless the retention of title or the assignment of claims should be invalid or unenforceable due to mandatory foreign legal provisions, the security corresponding to the retention of title or the assignment of claims in this scope shall be deemed to have been agreed. If the involvement of the customer should subsequently be necessary, the customer shall take all measures as are required to establish and maintain the security.

## 11. Consulting, project work, planning

11. Consulting, project work and planning shall only be binding on the customer to the extent that they are related to the use of our delivery object or service and are based on the customer being fully informed of the application purpose and the use. Should the customer provide drawings, plans, data or other information, he shall bear the sole responsibility for the accuracy thereof. The customer shall assume sole liability for any defects arising therefrom. The provision under Item 8 shall apply to our liability.

## 12. Ownership and copyright

12. All offer documents, drawings, cost estimates and other documents shall remain our property and must be returned on request. A right of retention shall not exist. The documents must not be made available to third parties nor otherwise exploited by the customer in any way. Ownership rights, copyright and any other protective rights shall belong to us without restriction. In the case of a breach, the customer shall pay compensation.

## 13. Confidentiality

13. The confidentiality of all business or technical information made accessible by us to the customer shall, until and unless it can be verified that said information is publicly known, be maintained with respect to third parties, and said information may only be provided to third parties by the customer with our written consent, wherein the third parties shall also be put under an obligation to maintain confidentiality. The customer may only use this information himself in connection with the order or with the eventual use of the object in accordance with the order. At our request, all information we have provided shall be returned to us or destroyed immediately and completely. Information as defined by this agreement shall be all data, plans, programs, knowledge, experience and expertise, namely regardless of the manner of recording, storage or transmission, and also independent of whether said information is designated explicitly or implicitly as secret or confidential.

## 14. Force Majeure

- 14.1 A violation of the contract or of these general terms and conditions due to delay or non-performance of some or all of our obligations shall not apply in the cases of Force Majeure. In the context of these General Terms and Conditions, Force Majeure means in particular all events of Force Majeure (in particular, but not exclusively, floods, fire, earthquakes or similar events), riots, war, strikes, lockouts or other industrial disputes, epidemics, malfunctions in telecommunications systems, malfunctions on the World Wide Web (Internet), government restrictions and acts by lawmakers, or any other cause (other than lack of funds) that is beyond our control.
- 14.2 The obligations stemming from these general terms and conditions shall be suspended as long as a case of Force Majeure exists. This does not apply to payment claims that were due prior to the case of Force Majeure or the service from which the payment claim resulted was already fulfilled before the case of Force Majeure. We shall announce a case of Force Majeure on our website immediately after it occurs, whereby the general terms and conditions and the contract between the parties shall continue to remain effective. If a breach of contract due to a case of Force Majeure lasts longer than 12 (twelve) weeks, we shall be entitled to terminate these general terms and conditions and the contract by sending a written notification.
- 14.3 Any liability on our part shall be excluded in the case of Force Majeure.

## 15. Product approval, Export control

- 15.1 The customer is obliged to check existing approval requirements and to strictly observe the relevant export regulations and embargoes, insofar as he exports the goods we have delivered or has them exported by third parties.
- 15.2 The customer is obliged to ensure that the required national product approvals or product registrations are obtained, as well as the guidelines in national legislation for providing the user information in the national language and all import regulations are met
- 15.3 The customer shall check and ensure and, upon request, shall prove to us that
  - the goods are not intended for use in armaments, nuclear technology or weapons technology;
  - no companies and persons named in the US-Denied Persons List (DPL) are supplied with US-originating products, US-software and US-technology;
  - no companies or persons named in the US-Warning List, US-Entity List or US-Specially Designated Nationals List are supplied with US-originating products without relevant permits;
  - no companies and persons are supplied, who are named in the list of Specially Designated Terrorists, Foreign Terrorists Organizations, Specially Designated Global Terrorists or the EU-Terrorist list or other relevant negative lists for export controls;
  - no military recipients are supplied with the goods that we deliver;
  - no recipients are supplied who violate other export control regulations, in particular those of the EU or the ASEAN countries;
  - all early warnings of the competent German or national authorities of the respective country of origin of the delivery are observed.
- 15.4 Access to and use of goods delivered by us may only take place if the aforementioned tests and safeguards have been carried out by the customer; otherwise the customer must refrain from the intended export and we will not be obliged to deliver.
- 15.5 If the delivery is agreed outside the country where the respective Witzenmann company, which is the contractual partner, has its registered office, the customer must ensure at his own expense that all national import regulations of the first country of delivery have been met with regard to the goods to be delivered.
- 15.6 The customer shall exempt us from all damage and expenses resulting from the culpable violation of the above obligations in accordance with section 15.1-15.5.

## 16. INCOTERMS, withdrawal, severability clause, place of performance, applicable law, place of jurisdiction

- 16.1 If commercial clauses have been agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS 2020 shall apply.
- 16.2 If a contractual party ceases to meet their financial obligations or if insolvency proceedings are initiated on their assets or non-judicial settlement proceedings are applied for, then the other contractual partner is entitled to rescind the part of the contract that remains unfulfilled.
- 16.3 Should a provision of this contract be ineffective, the contracting parties shall replace it with an effective one that most closely approximates the economic purpose intended by the ineffective provision. The ineffectiveness of the remaining provisions shall not be affected by the ineffectiveness of individual provisions.
- 16.4 The place of performance for delivery and payment, as well as for all other obligations under the supply contract, shall be Pforzheim for both parties of the registered office of our company
- 16.5 The contractual relationship is subject to German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. This choice of law also applies to non-contractual claims as defined by Art. 14 Para. 1 b) Regulation (EC) No. 864/2007 If a peremptory law is mandatory in individual cases, our terms and conditions must be interpreted in such a way that the economic purpose pursued by them is preserved as far as possible.
- 16.6 The place of jurisdiction for all legal disputes arising from the contractual relationship, as well as for all legal disputes pertaining to the establishment and to the validity of said contractual relationship and for non-contractual claims as defined by Art. 14 Para. 1 b) Regulation (EC) No. 864/2007 up to a dispute value of € 100,000.00 shall be Pforzheim, Germany for both parties At our discretion, we may also bring the claim at the customer's principle place of business. All disputes arising from or in connection with the current contract that involves an amount of up to € 100,000.00 or more will be finally decided by one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC), Paris. The language of the arbitration process is English.