

General Terms and Conditions for Sempell AG

I. General and Area of Application

1. Contracts shall be formed as a result of our quotations and respectively our written order confirmation coinciding with the General Terms and Conditions outlined here. Amendments and additions to the contract require our written approval.
2. Our General Terms and Conditions shall apply without exception; differing terms and conditions of our customers will not be acknowledged and are non-binding, unless we have specifically given written agreement accepting these differences. Our General Terms and Conditions also apply for all deliveries carried out by us even in the event that we are aware of differing terms and conditions of the customer.
3. Our General Terms and Conditions shall also apply without exception to all future business done with the customer.

II. Quotations and Documentation

1. Our quotations are subject to alteration. Customer orders are binding for a time period of two weeks and can be accepted by us through a written order confirmation or through the delivery of goods from us.
2. Unless explicitly agreed upon as binding, the specifications listed in our quotes, order confirmation, or related documents (such as diagrams and illustrations) for the goods including amounts, measurements, weight, capacity, construction, form and consumption, are only approximate guidelines. They do not depict an agreement regarding the workmanship. Furthermore they do not include any guarantee for the workmanship of our products.
3. Ownership and copyright of all samples, illustrations, diagrams, calculations and other such documents provided by us to the customer rest with us. Such documentation may not be made available to third parties without our specific approval and may not be copied.

III. Price and Payment

1. The prices listed in our quotation are non negotiable. Unless otherwise agreed upon, the prices are exworks, excluding the packaging which shall be separately invoiced. Special protective packaging will be included only when specifically agreed upon.
2. Our prices do not include VAT (Value Added Tax). The VAT shall be calculated according to the official rate on the day of invoicing and will be listed separately on the invoice.
3. Unless otherwise agreed upon, payment is to be made in full no later than the 15th day of the month following the delivery month.
4. Should the customer fall into arrears, we reserve the right to take unlimited legal action.
5. We are legally entitled to offsetting and to retention. The customer can by his own rights offset only claims which have been established as legally effective, uncontested or acknowledged by us. The customer is only entitled to exercise rights of retention against claims from the same legal relationship which have been established as being legally effective.
6. Without our previous written consent, the customer is not entitled to assign a claim against us, or in any other way have access thereto. A debt recovery through a third party is excluded. § 354 a German Commercial Code (HGB) is hereby unaffected.
7. Checks and bills of exchange shall be accepted only by previous special agreement or on account of payment, not as performance/payment. If we do not cash in these checks or bills of exchange, the customer is liable for damages even if he is free of fault.
8. Should the customer fall into payment arrears we reserve the right to demand immediate payment of all claims including deferred claims.

IV. Delivery

1. Delivery and production dates are non-binding unless we have expressly agreed that they be binding.
2. Partial and early deliveries shall be allowed. The conditions of which shall be pursuant to Clause III. 3.
3. We reserve the right to make construction and design alterations to the goods, provided the goods are not significantly altered and provided the alterations are reasonable to the customer.
4. The delivery period begins with the dispatch of the order confirmation.
5. The delivery dates and conditions are subject to the precondition that the customer has fulfilled all of his prerequisites timely and in due form. This particularly specifies that the customer assists us in obtaining necessary authorizations and licenses from domestic and foreign government agencies or other locations. Further prerequisites include that the customer shall provide any other necessary documents, and provide a down-payment in the amount agreed upon.

6. Delivery is subject to the precondition that we are supplied in a timely manner and in due form. We are only liable for delivery if we can acquire the necessary raw materials, indirect materials or operating materials unless we are unable to act as the agent.
7. The delivery date shall be reasonably extended in the event of actions in the context of labour disputes, particularly strikes and lockouts, as well as the occurrence of any other unpredictable hindrances which are not under our control, and which significantly influence our ability to complete the production and delivery. This also holds true if such hindrances should affect any of our suppliers and/or vendors. We shall notify the customer as soon as possible of the beginning and end of any such hindrances.
8. Should the customer's financial standing become significantly worse upon completion of the contract thereby threatening his ability to make payment, we reserve the right to stop all deliveries until payment of goods has been made or until satisfactory security is provided by the customer. Should the customer not fulfill these requirements within a reasonable time frame specified by us, we reserve the right to terminate the contract and to demand damages instead of performance/payment.
9. The delivery date has been successfully met as long as the deliverable goods have left the delivery area or the approval for delivery has been made by this date.
10. Should we fall into delivery arrears, and an extension of the delivery date granted by the customer proves to be fruitless, the customer is entitled to withdraw from the contract. Such an extended delivery period is only applicable if we were responsible for the delay and if a situation pursuant to § 323.2 of the German Civil Code (BGB) exists. The customer is entitled to damage claims as well as reimbursement claims due to delay of delivery only in the amount of typical contractual and foreseeable damages and only if the delay was due to gross negligence, or stemmed from significant breach of duty.
11. Should a delay of partial deliveries occur, the customer is not entitled to enforce his rights on the remaining deliveries unless he rightly has no further interest on the remaining deliveries.
12. Should such a delivery delay occur due to reasons caused by the customer, the customer is liable for all warehouse costs beginning one month after notice has been given for delivery clearance. This amount shall however be a minimum 0.5% of the total invoice amount for every month.

V. Transfer of Risk and Acceptance

1. Risk shall transfer to the customer as soon as the goods leave the delivery area or as soon as the goods are declared to be ready for shipment.
2. Should the customer specifically request so, we shall insure the deliverable goods in the amount and according to the specifications provided by the customer. All costs resulting therefrom shall be carried by the customer.
3. Should the customer fall into acceptance arrears, or infringes any conditions regarding his cooperation, we shall retain the right to demand compensation including any additional costs incurred to us therefrom. In such a case the risk of random loss or damage to the goods transfers to the customer who has fallen into acceptance arrears.

In addition, should an extension of the time frame for acceptance prove to be fruitless we retain the right to terminate the contract, or otherwise repossess the goods from the customer with intent to deliver at a later date thereby avoiding termination of the contract.
4. The customer is obliged to accept the delivered goods pursuant to Clause VII. even if the goods contain minor defects that do not impair satisfactory performance. The customer is not allowed to reject or return the goods unless he has been granted the conditions pursuant to Clause VII. 4.

VI. Service and Maintenance

1. The customer is obliged to comply with all instruction from us concerning the use of the goods and is obliged to have us or one of our authorized service technicians carry out service, inspection and maintenance on the goods at the recommended and required intervals.
2. Spare and damaged parts shall only be installed or replaced by us or one of our authorized service technicians.
3. All of our service work shall be completed in accordance with the conditions outlined in our General Service Conditions and Terms of Business and shall be invoiced at the hourly rates valid at the time that the services are rendered.

VII. Damage Claims and Liability

1. The damage claims of the customer are assumed to be in due form and in accordance with the Inspection and Notification of Defects Conditions outlined in § 377 of the German Civil Code (HGB).
2. The customer is liable for any costs incurred by us while working a claim from the customer, should it be determined that the claim was insignificant or ungrounded.

3. Should the delivered goods actually be damaged or defect we reserve the right to choose whether to repair or replace the goods. Should we choose to repair the goods, we are liable for the costs incurred thereby including the cost of the replacement goods/parts, including all shipping costs, as well as appropriate costs for demounting and reinstallation, and including all costs for test, measurement and adjustment work. The customer is obliged to provide us clear access to the goods in need of repair. Should the customer use his own employees or his own goods in connection with such a repair, he is only entitled to make claim against us at cost price.

4. Should we be unable or unwilling to accomplish a rectification of defects or a compensation delivery (or in the case of services, supply of the services again) pursuant to Clause VII. 3 above, or should we deny it or should be unable to accomplish a rectification of defects or a compensation delivery within a reasonable timeframe, or in any other way unable to accomplish a rectification of defects or a compensation delivery so is the customer entitled to withdraw and terminate the contract or require reduction of his contractual payment.

5. Should the customer be unable to be refunded for the services rendered, he may only terminate the contract due to damaged goods if such a refund is not possible due to the nature of the services rendered, if we are unable to provide refund, or if a defect first became apparent during further production or transformation of the goods.

6. Should we deliver damaged goods or partial service, the customer is only entitled to termination of the complete contract and compensation instead of replacement or completion of the services if he is not interested in the services provided when viewed objectively.

7. We are only partially liable for the assignment of claims to which we have a right from the supplier of outsourced products/service. Should the claims of the supplier of the outsourced products/goods fail, the conditions regarding damage claims outlined in these General Terms and Conditions shall prevail.

8. We are not liable for damages due to incorrect or abusive use, ordinary wear and tear, chemical, electrochemical or electric influences, unsuitable storage and/or surroundings, neglect of the equipment, failure to complete or unauthorized service and inspections, modifications of the construction by the customer or an unauthorized third party, or the outfitting of the goods with spare parts which were not supplied by us.

We are not liable should a defect arise because the customer provided us with incorrect or incomplete information regarding the delivered goods. We assume no liability should we be given incomplete or incorrect information regarding the use, the dimensions, the technical requirements or for incomplete implementation instructions or diagrams.

9. Irrespective of the condition outlined in Clause IV. 10 and unless otherwise stated in the guarantees accepted by us for workmanship of the delivered goods, we assume liability for other damages exclusively according to the following terms:

– We are liable for damages or compensation in accordance with the statutory provisions for damages caused by premeditated and malicious actions, for damages resulting from gross negligence of our statutory agent or coordinating employees, as well as injury to life, body or health or for liability under the Product Liability Act. In accordance with the Manufacturer's Liability § 823 of the German Civil Code (BGB) our liability is limited to the compensation from our corporate liability insurance, as long as no situation as outlined in the second hyphenated passage of this Clause exists and as long as the typical, foreseeable damage is lower. Should the insurance not cover or not completely cover these claims, our liability is limited to a coverage amount of € 3,000,000.

– We shall be limitedly liable for damages or compensation only in the amount of usual contractual and foreseeable damages due to infringement of contractual obligations, or cardinal obligation in the event that this breach of duty was our fault.

– We shall be limitedly liable for damages or compensation only in the amount of typical contractual and foreseeable damages due to infringement of contractual obligations, or cardinal obligations in the event that this breach of duty was due to more than just minimal negligence

Our liability coverage from our corporate liability insurance is limited to 5 % of the order should we be found liable for damages from defects in accordance with the provisions outline in this contract, and in absence of a situation pursuant to Clause IX. 9 first hyphenation, and in the case that we did not provide a warranty for the condition of the delivered goods/services. We shall do our best to provide the customer, at his own cost, with a higher liability insurance coverage amount, should the customer make such a request.

All other liability is excluded. As far as our liability is excluded, so is the personal liability of our white collar workers, labourers, employees, representatives, and vicarious agents also excluded.

10. This statutory period for damage claims of the customer shall expire 12 months after delivery to the customer or a third party specified by the customer. Should we be liable for an infringement to additional or previous contractual requirements or due to incorrect handling, which have not connection to damaged goods, the statutory period shall end two years after delivery.

11. The statutory period shall prevail and override the stipulations of Clause VII. 10 in the event that we should be liable pursuant to Clause VII. 9 first hyphenation.

VIII. Retention of Title

1. The goods delivered shall remain our property until payments in full of all claims relating to this business connection, including any future claims, have been made. This also includes those from coinciding or future contracts.

2. This also applies should one or more claims from the current invoice be accepted and the remaining balance of accounts be acknowledged and drawn upon.

Should we terminate the contract due to behaviour of the customer contrary to contract, particularly in the case of late payment, the customer must carry all costs incurred by us during repossession of the goods.

3. The customer is obliged to give us immediate written notice and all necessary explanations in the event of pledging or other third party interventions. The customer is further obliged to inform the third party about the ownership structure. The customer is not allowed to pledge the delivered goods nor to use them as security.

The customer is obliged to treat the goods with care and in particular to insure the goods against fire and theft in the amount of its original value.

4. The customer shall be justified to resell the goods in regular course of business.

He now cedes all claims with all additional rights, which would accrued due to the resale to the buyer or third party, irregardless whether the reserved goods are sold without further processing or after further processing. The customer is authorized to recover these claims even after they have been ceded.

Our authority to collect the claims ourselves is untouched thereby. However we commit ourselves, not to collect the claims as long as the customer makes due payment, does not fall into payment arrears, and in particular as long as the customer does not apply for insolvency proceedings or declare bankruptcy.

We can demand that the customer notify us of ceded claims and the party liable (debtor), that the customer must make all necessary specifications for collection, that he provide us with all related documents, and that he inform the party liable (debtor) of the assignments.

5. The delivered goods may be further processed/manufactured by the customer in the fair course of business or may be bonded with other things. Processing, bonding and transformation must be for us as the manufacturer in accordance to § 950 of the German Civil Code (BGB), however without any requirements or costs to us. The customer acts as the authorized agent.

Should our ownership be extinguished due to bonding or processing with other movable things, it shall now be agreed that the customer shall pass to us joint ownership of the new goods on a prorata basis (relation of the invoice value of the delivered goods to the invoice value of the newly processed goods). The customer holds this joint ownership for us free of charge. Sale of the new jointly owned goods shall be pursuant to Clause VIII. 4.

6. We are obliged to release all securities at the request of the customer, should in consideration of the customary banking discounts the realizable value of the securable claims exceed 20 %. The purchase price of the goods and the nominal value of the claims are assumed thereby.

7. Should the goods be exported out of the Federal Republic of Germany and should these conditions regarding the retention of title be non-binding in the export country, the customer grants us under these conditions and is required to grant us similar rights covering the delivered goods which are legally acceptable and binding in his country, and which are similar to the retention of title conditions outlined here within.

IX. Final Clauses

1. Unless otherwise agreed upon in our quote or order confirmation, Mönchengladbach is the place of performance.

2. The legal venue is Mönchengladbach; we are however entitled at our discrepancy to use the court at the place of residence of the customer.

If the customer has his place of residence outside of Federal Republic of Germany, we are entitled to have all disputes arising from or in connection with this contract settled by a court of arbitration comprised of one or more arbitrators named, excluding the proper jurisdiction, and pursuant to the Arbitration Court Regulations of the International Chamber of Commerce Paris (ICC). In such a situation the location of arbitration shall be Mönchengladbach; the language for the proceedings shall be German.

3. The substantive law of the Federal Republic of Germany shall apply for these General Terms and Conditions as well as all legal and contractual relationships with the customer, with the exception of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG).

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