

# → General terms and conditions (Last updated: 02/2019)

## Section 1 Scope

- (1) All deliveries, services and offers of Goetze KG Armaturen (hereinafter referred to as "Seller") are exclusively governed by these General Terms and Conditions of Delivery. They form part of all contracts concluded between the Seller and their contracting partners (hereinafter also referred to as "Customer") for the deliveries and services offered by the Seller. They also apply to all future deliveries, services and offers of the Seller, even if they have not been renegotiated separately.
- (2) The general terms and conditions of business of the Customer or third parties shall not apply, even if the Seller fails to object to them on an individual basis. Even if the Seller refers to a document containing or referring to general terms and conditions of business of the Customer or a third party, this shall not be classed as agreement with the applicability of such.

## Section 2 Offer and conclusion of contract

- (1) All of the Seller's offers are non-obligatory and non-binding, unless explicitly marked as binding or containing a specific acceptance deadline. The Seller may accept orders or assignments within 14 days from receipt.
- (2) The legal relationship between the Seller and Customer shall be solely governed by the written purchase contract concluded between the two Parties, including these General Terms and Conditions of Delivery. It contains all agreements made between the Contracting Parties regarding the object of the contract. Verbal commitments made by the Seller prior to the conclusion of this contract are legally non-binding and verbal agreements made between the Contracting Parties are replaced by the written contract, unless they contain explicit instructions that they shall continue to apply in a binding manner.
- (3) Any amendments and addendums to the agreements concluded, including these General Terms and Conditions of Delivery, shall be placed in writing to become effective. With the exception of managing directors or authorised representatives, the Seller's employees may not enter into any verbal agreements that deviate from the written agreement. To preserve the written form requirement it is sufficient to send messages and documents via telecommunication channels, particularly telefax or email, if a copy of the signed declaration is transferred.
- (4) Information provided by the Seller on the items or services to be delivered (e.g. weights, dimensions, practical values, durability, tolerances and technical data) as well as our presentations of the same (e.g. drawings and illustrations) are only approximations, unless they have to be accurately matched to ensure that the item can be used for the contractually agreed purpose. They are not guaranteed quality features but descriptions or designations of the delivery or service. Deviations common in the industry and deviations resulting from legal provisions or constituting technical improvements as well as the replacement of components with equivalent parts are permissible as long as they do not impair the contractually agreed use.
- (5) The Seller reserves the right to retain the title or copyright in all offers and cost estimates submitted by the Seller as well as any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Customer. The Customer shall not transfer such items or their contents to third parties, disclose them, use them themselves or through third parties or copy them without explicit consent from the Seller. The customer shall return such items completely to the Seller upon the latter's request and destroy any copies made if they are no longer required for the Customer's proper operations or if the negotiations do not lead to the conclusion of a contract. The storage of electronically provided data for standard backup purposes is excluded from this rule.

## Section 3 Prices and payment

- (1) The prices apply to the scope of services and delivery specified in the order confirmation. Additional or special services are invoiced separately. The prices are denominated in euros, apply ex works and exclude packaging, statutory VAT, customs duties and fees for exports and other public levies.
- (2) If the agreed price is based on the Seller's list prices and the delivery is scheduled for more than four months from the conclusion of the contract, the Seller's list prices ap-

pllicable at the time of delivery shall apply (less an agreed percentage-based or fixed discount).

- (3) Invoices are payable in full within thirty days, unless agreed otherwise and in writing. The payment date is based on the date payment is received by the Seller. Cheque payments are not accepted, unless otherwise agreed on an individual basis. If the Customer fails to pay on time, the outstanding amounts shall incur 5% p. a. interest as from the due date. This shall not affect the assertion of higher interest rates and additional damages in the case of default.
- (4) The Customer may only offset their own counterclaims or retain payment on the grounds of such claims if they are undisputed or recognised by declaratory judgement or result from the same order under which the delivery was made.
- (5) The Seller may provide as yet outstanding deliveries or services exclusively against advance payment or provision of securities if after the conclusion of the contract, the Seller becomes aware of circumstances which could significantly reduce the Customer's creditworthiness and which endanger the payment of the Seller's outstanding receivables from the Customer arising from the respective contractual relationship (including from other individual orders which are governed by the same framework contract).

## Section 4 Delivery and delivery period

- (1) Items are delivered ex works.
- (2) Any deadlines and dates for deliveries and services stated by the Seller shall only be approximations, unless a fixed deadline or date has been explicitly confirmed or agreed. If the dispatch has been agreed, the delivery deadlines and dates refer to the date of transfer of the items to the freight forwarder or other third party engaged with the transport.
- (3) The Seller may, regardless of their rights arising from delay caused by the Customer, request from the Customer an extension of the delivery and service periods or postponement of delivery and service periods by a period in which the Customer fails to meet their contractual obligations to the Seller.
- (4) The Seller shall not assume any liability for inability to deliver or delivery delays caused by force majeure or other events unforeseeable at the time the contract was concluded (e.g. operational disruptions of any kind, difficulties with procuring materials or energy, transport delays, strikes, legitimate lockouts, staff shortages, lack of energy or raw materials, difficulties with procuring required official authorisations, government measures or failure to deliver, or incorrect or late delivery by suppliers) which fall outside the Seller's scope of control. Insofar as such events significantly impede or render impossible the delivery or performance by the Seller and the impediment is not only of a temporary nature, the Seller shall be entitled to withdraw from the contract. In the event of temporary obstacles, the delivery or service periods shall be extended or postponed by the period of the impediment plus a reasonable start-up period. If the Customer cannot be reasonably expected to accept the delivery or service due to the delay, the Customer may withdraw from the contract by giving the Seller immediate written notice.
- (5) The Seller may only deliver partial deliveries if

- the customer is able to use the partial deliveries within the contractually agreed purpose,
  - the delivery of the remaining ordered goods is ensured, and
  - the Customer does not incur any significant additional effort or costs (unless the Seller agrees to assume such costs).
- (6) If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for the Seller for whatever reason, the Seller's liability shall be limited to compensation in accordance with Section 8 of these General Terms and Conditions of Delivery.

## Section 5 Place of fulfilment, dispatch, packaging, risk transfer and acceptance

- (1) The place of fulfilment for all obligations arising from the contractual relationship is Ludwigsburg, Germany, unless

stated otherwise. If the Seller is also owes the installation, the place of fulfilment is the place where the installation is to be made.

- (2) The Seller may choose the type of dispatch and packaging at their discretion with due diligence.
- (3) The risk is transferred at the latest with the transfer of the delivery item to the carrier, freight forwarder or other third party engaged with dispatching the items (with the start of the loading process being the applicable date and time). The same applies if partial deliveries are sent or the Seller has assumed other services as well (e.g. dispatch or installation). If the dispatch or transfer is delayed due to circumstances within the scope of control of the Customer, the risk is transferred to the Customer on the date on which the delivery item is ready for dispatch and which the Seller has reported to the Customer.
- (4) The Customer carries the storage costs after the risk has been transferred. In the event of items being stored by the Seller, the storage costs are 0.25% of the invoice amount for the delivery items to be stored per full week. The assertion and proof of additional or fewer storage costs remain reserved.
- (5) The Seller shall only insure the dispatched items against theft, breakage, transport, fire and water damage and other insurable risks upon explicit request from the Customer and at the latter's cost.
- (6) As far as an acceptance has to take place, the purchased item shall be deemed to have been accepted, if
- the delivery and installation, if the Seller owes the installation, has been completed,
  - the Seller notifies the Customer with reference to the fictional acceptance in accordance with this Section 5 (6) and has requested for the Customer to inspect and approve the items,
  - (twelve) working days have passed since the delivery or installation or the Customer has started using the purchased item (e.g. has commissioned the delivered system) and if in this case (six) working days have passed since the delivery or installation, and
  - the Customer has failed to accept the purchased item within this period for a reason other than a defect reported to the Seller which makes it impossible to use the purchased item or significantly impairs its use.

## Section 6 Warranty, material defects

- (1) The warranty period is 24 months from delivery or from acceptance, if acceptance is required. This deadline does not apply to compensation claims asserted by the Customer on the grounds of injury to life, limb and health or malicious or grossly negligent violations of the obligations on the part of the Seller or their vicarious agents which shall expire by limitation in accordance with the legal provisions.
- (2) The delivered items shall be diligently inspected immediately upon delivery to the customer or third party appointed by the Customer. The items are classed as approved by the Customer with regard to obvious defects or other defects that would have been discernible during a prompt, diligent inspection if the Seller does not receive a written notice of complaint within (seven) working days from delivery. With regard to other defects, the delivery items are classed as approved by the Customer if the Seller does not receive the notice of complaint within (seven) working days from the date on which the defect showed. If, under normal use, the defect was already apparent at an earlier point in time, this earlier point in time shall, however, be decisive for the commencement of the complaint period. Any delivery items reported as defective shall be returned carriage paid to the Seller upon the Seller's request. If the complaint is justified, the Seller shall reimburse the costs of the cheapest shipping route. This rule does not apply if the costs increase due to the delivery item being located in another place than the place of its intended use.
- (3) If material defects are found in the delivered items, the Seller initially shall, and may, choose to repair or replace the defective item within a reasonable period. Should such repair or replacement fail, i.e. if they are impossible, unreasonable, if the Seller refuses to implement them or is delayed in doing so, the Customer may withdraw from the contract or reduce the purchase price appropriately.

- (4) If a defect is caused by the Seller, the Customer may claim compensation under the conditions stated in Section 8.
- (5) In the event of defects in components from other manufacturers, which the Seller cannot rectify due to licensing laws or actual reasons, the Seller shall, at its discretion, assert their warranty claims against the manufacturers and suppliers for account of the Customer or assign such claims to the Customer. Warranty claims may only be asserted against the Seller for such defects in accordance with the other terms and conditions and these General Terms and Conditions of Delivery if the enforcement of the above claims against the manufacturer and supplier before a court was unsuccessful or is expected to be unsuccessful, due to insolvency, for instance. For the duration of such legal dispute, the statutes of limitation of the Customer's affected warranty claims against the Seller shall be suspended.
- (6) The warranty is voided if the Customer modifies the delivery item, or engages a third party to do so, without the Seller's consent and such action makes it impossible or unreasonably difficult to rectify the defect. In any case, the Customer shall carry the additional costs for rectifying the defect incurred through the modification.
- (7) The delivery of used items which may be agreed with the Customer in individual cases is excluded from all warranty for material defects.

#### Section 7 Property rights

- (1) In accordance with this Section 7, the Seller is responsible to ensure that the delivery item is free from third-party industrial property rights or copyright. Each Contracting Partner shall notify the other Contracting Partner immediately and in writing of any claims being asserted against them on the grounds of a violation of such rights.
- (2) In the event of the delivery item violating a third-party industrial property right or copyright, the Seller shall, at their own discretion and cost, modify or replace the delivery item so as to ensure that no further third-party rights are being violated, but the delivery item continues to fulfil the contractually agreed functions or provide the Customer with the right of use by concluding a licensing agreement with the third party. Should the Seller be unable to do so within a reasonable period of time, the Customer may withdraw from the contract or reduce the purchase price accordingly. Any compensation claims of the Customer are subject to the restrictions of Section 8 of these General Terms and Conditions of Delivery.
- (3) In the event of legal defects in products from other manufacturers delivered by the Seller, the Seller shall, at its discretion, assert their claims against the manufacturers and sub-suppliers for account of the Customer or assign such claims to the Customer. In accordance with this Section 7, in such cases, claims against the Seller only exist if the enforcement of the above claims against the manufacturers and sub-suppliers before a court was unsuccessful or is expected to be unsuccessful, due to insolvency, for instance.

#### Section 8 Liability for damages on the grounds of culpability

- (1) The Seller's liability for damages, for whatever legal reason, particularly on the grounds of impossibility, delay, deficient or incorrect delivery, contractual violation, violation of obligations during contractual negotiations and impermissible actions, to the extent that this involves culpability, is limited in accordance with this Section 8.
- (2) In the event of simple negligence of its executive bodies, legal representatives, employees or other vicarious agents, the Seller does not assume any liability, unless the violation violates material contractual obligations. Material contractual obligations include the obligation to deliver and install the delivery items on time, to ensure that it is free from legal defects and material defects which more than just immaterially impair its function or usability as well as obligations to provide advice, protection and care which aim to make it possible for the Customer to use the delivery item as contractually intended or to protect life, limb and health of the Customer's employees or protect the Customer's property against significant damage.
- (3) If the Seller generally assumes liability for damages in accordance with Section 8 (2), such liability is limited to damages which the Seller discerned as a potential consequence of a contractual violation when concluding the contract or which they would have had to discern when applying the usual diligence of a business person. Indirect and consequential damages that are the result of defects in the delivery item are only subject to compensation in so far as such damage is to be typically expected when the product is used for the purpose intended.
- (4) In the event of liability for simple negligence, the Seller's liability to compensate material defects and resulting additional loss of assets is limited to EUR 1,000,000.00 per damage event, even if caused by a violation of material contractual obligations.

- (5) The above exclusions and limitations of liability apply to the same extent with regard to the executive bodies, legal representatives, employees and other vicarious agents of the Seller.
- (6) If the Seller provides technical information or acts as a consultant and such information or consulting services do not form part of the contractually agreed scope of services owed by the Seller, they are provided free of charge and under exclusion of all liability.
- (7) The limitations of this Section 8 do not apply in the event of the Seller's liability on the grounds of malicious intent, guaranteed quality features, injury to life, limb and health or in accordance with product liability law.

#### Section 9 Retention of title

- (1) The retention of title agreed below serves to secure all current and future receivables of the Seller against the Customer arising from the supplier relationship between the Contracting Partners (including balance receivables arising from current account relationship limited to this supplier relationship).
- (2) The goods delivered by the Seller to the Customer remain the Seller's property until full payment of all secured receivables. The goods, and goods which replace the goods in accordance with the provisions stated below and which are covered by the retention of title are hereinafter referred to as "goods subject to retention of title".
- (3) The Customer shall store the goods subject to retention of title free of charge for the Seller.
- (4) The Customer is entitled to process and sell the goods subject to retention of title within the scope of their ordinary operations until they are exploited (Section 9). The goods shall not be pledged or transferred as securities.
- (5) If the goods subject to retention of title are processed by the Customer, it shall be agreed that they are processed in the name and for account of the Seller, as the manufacturer, and that the Seller immediately acquires the ownership or – if the processing includes materials from various owners or the value of the processed item is higher than the value of the goods subject to retention of title – co-ownership (proportionate ownership) in the newly created item in the ratio of the value of the goods subject to retention of title to the value of the newly created item. Should the Seller not acquire such ownership, the Customer shall herewith transfer to the Seller their future ownership or – within the ratio stated above – co-ownership in the newly created items by way of security. If the goods subject to retention of title are combined with other items into one indivisible item or are mixed so that they cannot be separated and if one of the other items is to be regarded as the main item, the Seller shall transfer to the Customer the co-ownership in the indivisible item in proportion to their ownership of the main item at the ratio stated in sentence 1.
- (6) In the event of the goods subject to retention of title being sold on, the customer shall herewith transfer the resulting receivable from the buyer – if the Seller co-owns the goods subject to retention of title proportionate to the co-ownership ratio – to the Seller by way of security. The same shall apply to other receivables that replace the goods subject to retention of title or are otherwise created with regard to the goods subject to retention of title, such as insurance claims or claims arising from unauthorised actions in the event of loss or destruction. The Seller revocably entitles the Customer to collect the receivables assigned to the Seller in the Customer's own name. The Seller may only revoke this authorisation to collect the receivables if they plan to exploit them.
- (7) In the event of third parties seizing the goods subject to retention of title, particularly by way of garnishment, the Customer shall notify them of the Seller's retention of title immediately and notify the Seller of such events to enable the latter to enforce their ownership rights. If the third party is unable to reimburse the Seller for the court and out-of-court costs incurred through such actions, the Customer shall assume liability for them to the Seller.
- (8) The Seller shall release the goods subject to retention of title or any items or receivables in their place if their value exceeds the amount of the secured receivables by more than 50%. The Seller may choose the items to be released in this case.
- (9) If the Seller withdraws from the contract on the grounds of the Customer's violation of the contract – particularly in the event of payment default – (exploitation event), the Seller may request the return of the goods subject to retention of title.

#### Section 10 Final provisions

- (1) In the event of the Customer being a business person, legal entity under public law or special trust under public law, or if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes that may arise from the business relationship between the Seller and Customer is Ludwigsburg, Germany or the head office of the Customer,

by choice of the Seller. However, the exclusive place of jurisdiction for claims against the Seller in such case shall be Ludwigsburg, Germany. Mandatory legal provisions regarding the exclusive places of jurisdiction shall not be affected by this rule.

- (2) The relationships between the Seller and Customer are exclusively governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- (3) Should the contract or these General Terms and Conditions of Delivery contain regulatory gaps, such regulatory gaps shall be completed with such legally effective provisions that the Contracting Partners would have agreed to meet the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery had they been aware of the regulatory gap.